

# CODE OF ETHICS FOR COURT CLERKS

*Innovation and Challenge in the Romanian Judicial System*

Final Report on the Code of Ethics for Court Clerks and on  
ten seminars held by ABA/CEELI with funding from the  
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# I. BACKGROUND

Within the context of an increasingly complex legislative framework in Romania, one might argue: why create yet another set of rules, specifically one to regulate the moral conduct of court personnel? Further, shouldn't general societal norms of decency, good behavior and common sense be sufficient? And, wouldn't developing such a Code burden unnecessarily the Romanian judiciary already faced with an indigestible stack of new laws and regulations?

In fact, the National School of Clerks (NCS) – the leadership Romanian organization tasked with training future court clerks and with providing continuing education programs for court personnel – approached CEELI in 2003 about helping develop such a Code in partnership with a group of Romanian justice system officials, judges, prosecutors, and administrative staff. The request was driven by a dual purpose: provide guidance to court staff often confronted with ambiguous situations for which no thoughtful guidelines existed; enhance court staff awareness of their critical role in how the judiciary and the justice system are perceived by Romanian society.

Other principles guided the project: the lessons learned in the drafting and implementation of the 2001 Code of Ethics for Magistrates<sup>1</sup>; producing a Code that was informed by the reality of court personnel daily professional responsibilities; establishing norms that are consistent with EU principles and reflect and match the quality of Codes developed abroad (simplicity and brevity), to ease the understanding and application of the Code, once adopted.

It should be noted that this project is one of, if not the first in the region.

<sup>1</sup> See separate CEELI publication “The Code of Ethics for Magistrates – Theoretical and Practical Aspects,” Final Report on Six Seminars Held by ABA/CEELI, published in July 2005.

## II. THE PROJECT

In coordination with the NSC, CEELI developed a step by step work plan to:

A) Create through a consensus process a text in collaboration with a Working Group of principal stakeholders, including representatives of the Ministry of Justice<sup>2</sup> and of the NSC, and of courts, prosecutors' offices, National Agency for Public Servants and Court Clerks Union.

B) Hold seminars to test the comprehensiveness and applicability of the Code, involving groups of sitting clerks as well as clerk trainees. In preparation for the seminars, CEELI decided to develop a core group of trainers versed in interactive methodology, drawing on experienced magistrates and court clerks, in collaboration with the EU Twinning PHARE project "Continuation of Assistance to the development of the National Institute for Magistrates and the National School for Clerks", and produce a core curriculum on "ethics for court clerks" to be adopted by the NSC as part of its routine course offerings (both at the initial training and continuing education stages).

C) Compile their observations in a document that was provided, along with the draft Code, to the Ministry of Justice and, eventually, submitted to the SCM for formal adoption.

The project began in September 2003 with the drafting of the Code by a Romanian Working Group, followed by a train of trainers session held on September 21-24, 2004. The ten seminars took place from November 2004 to May 2005. Reports including a compilation of the participants' comments and suggestions were submitted to the MoJ and SCM throughout the project.

<sup>2</sup> When the project started, in fall 2003, the NSC – then called the Training Center for Clerks (TCC) – was placed under the jurisdiction of the Ministry of Justice (MOJ). Following the adoption in 2004 of a "package" of laws reforming the judiciary, such jurisdiction was transferred along with numerous other responsibilities, to a Superior Council of Magistrates elected by their peers, and independent from the MOJ.

## A. Draft Code of Ethics for Court Clerks

The initiative to develop the Code of Ethics for Court Clerks was guided by the goal of creating clear guidelines to provide court clerks with an instrument for finding proper solutions to ethical dilemmas or to routine situations dealing with ethics in court. The drafting process went through several stages: setting up the Working Group, selecting the working methodology, identifying relevant domestic and comparative resources, and finally producing the draft Code.

### I. Setting up the Working Group

At the joint request of ABA/CEELI representatives and the National School for Clerks' (NSC) management, the Minister of Justice approved, through an Order, the appointment of the members of the Working Group to draft the Code. In order to ensure credibility and get insights from all the major players in the field of the judiciary, group members included representatives of the Ministry of Justice, NSC trainers in ethics, NSC leadership, the union of court clerks, the Tribunal and Court of Appeal of Bucharest, the Bucharest Bar, the National Agency for Public Servants, the Prosecutor's Office of the High Court of Cassation and Justice, and representatives of ABA/CEELI<sup>3</sup>.

### II. Working methodology

Over a six-month period (September 2003-February 2004), the working group held regular meetings at the National School for Clerks. In order to present the approving body<sup>4</sup> with such a draft regulation, members of the group had to familiarize themselves first with similar domestic and foreign legal norms. They discussed and debated continental and common law provisions that have been used to lay the foundation of ethical conduct of court personnel. During these sessions, members of the group shared views and opinions on what provisions such a regulation should contain, and then divided among themselves tasks in drafting the chapters of the code.

<sup>3</sup> Members of the working group: **Șerban Bengescu** – prosecutor of the Prosecutor's office of the High Court of Cassation and Justice, NSC trainer; **Paula Ghițescu Cocca** – legal counselor, the National Agency for Public Servants; **Cristiana Mihaela Crăciunescu** – director of NSC; **Lavinia Curelea** – judge inspector, the Ministry of Justice, NSC trainer; **Lucica Dițu** – court clerk of the Bucharest Court of Appeals; **Claudia Dumitru** – court clerk of the Bucharest Tribunal; **Cristina Irimia** – legal counselor, department of legislation, the Ministry of Justice; **Alexandra Mocanu** – judge at the First Instance Court of the Third Sector of Bucharest, NSC trainer; **Dorinel Oancea** – prosecutor of the Prosecutor's Office of the High Court of Cassation and Justice; **Ileana Petre** – legal counselor, department of legislation, the Ministry of Justice; **Nela Petrișor** – President of the Fifth Section of the Bucharest Court of Appeals, NSC trainer; **Corina Pușchin** – vice-president of the First Instance Court of the Fourth Sector of Bucharest, NSC trainer; **Maria Rusu** – legal counselor, department of European Integration, the Ministry of Justice; **Mircea Petre Stănculescu** – vice dean of the Bucharest Bar; **Anca Tămaș** – chief of the department of European Integration, the Ministry of Justice; **Marius Vișinescu** – “Justiția” Union of Court Clerks; **Luminița Nicolae** – Senior staff attorney, ABA/CEELI; and **Madeleine Crohn** – country director, ABA/CEELI.

<sup>4</sup> The Ministry of Justice, at the time.

### III. Resources

In order to assist the Working Group members in acquiring a broad perspective on court personnel ethical issues, and the necessary level of information, knowledge and expertise, ABA/CEELI provided them with comparative materials, including domestic legislation<sup>5</sup> as well as relevant foreign regulations<sup>6</sup>.

The draft was commented upon by two American experts, Markus Zimmer<sup>7</sup> and Don Cullen<sup>8</sup>. Their recommendations were discussed by the Working Group members during their final meeting.

Between February 2004 and May 2004, the draft Code was posted on the NSC web-site as well as sent to courts, nationwide, to the Department of Human Resources and Statistics of the Ministry of Justice, and to the National Institute for Magistrates for input.

### IV. Outcome

On May 18th 2004, after incorporating suggestions from the above-mentioned institutions, the NSC submitted the final draft to the Ministry of Justice, the institution responsible at the time for approving the Code.

In September 2004, the Superior Council of Magistrates (SCM) became the Romanian institution entrusted with lead responsibilities regarding magistrates' career<sup>9</sup>. Tasked with helping reform the judiciary and improving the credibility of courts, SCM formed a working group to review the draft (as submitted in May 2004 to the MoJ) and asked for ABA/CEELI's technical input. CEELI representatives provided the SCM twice<sup>10</sup> with commentaries. The suggestions were based, in part, on the input of practitioners and students of the NSC and included:

- *General observations* on provisions that could/should be included in the draft, and on avoiding duplication of provisions already contained in other laws.
- *Specific comments* and suggestions on the language used for some principles, and on the rewriting of some provisions to ensure clarity of interpretation and application. (see Appendix 4).

<sup>5</sup> The Romanian Code of Ethics for Magistrates and the draft Code of Ethics for Romanian Public Servants.

<sup>6</sup> The US Code of Conduct for Judicial Employees, the Code of Conduct for EU Lawyers, Recommendation no. 2000(10) of the Council of Europe on the Codes of Conduct for Public Servants, the National Association for Court Management - Model of Code of Conduct (see Appendix 2).

<sup>7</sup> Clerk of Court, U.S. District Court, District of Utah.

<sup>8</sup> Founding president of the National Association of Court Managers (NACM)

<sup>9</sup> According to article 28 paragraph 3 of Law no.317 on the Superior Council of Magistrates and article 94 paragraph 1 of the Law no. 567 on the Status of Court Clerks, the SCM became the institution responsible for approving such a regulation.

<sup>10</sup> March 17, 2005, April 4, 2005.



On April 26, 2005, the SCM approved *The Code of Ethics for Court Clerks* regulation, which was published on May 6, 2005 in the Official Journal.

## B. Seminars

In order to gain local practitioners' trust and confidence in adhering to a Code of Ethics, ABA/CEELI recognized the necessity for this regulation to reflect their opinions. To that end, ABA/CEELI sought to collect the comments and suggestions of trainees of the National School for Clerks as well as those of experienced court clerks working in the courts, nationwide.

In partnership with the National School for Clerks (NSC) and with funding from the United States Agency for International Development (USAID), ABA/CEELI organized, between November 2004 and May 2005, ten seminars<sup>11</sup>. In addition to collecting the participants' opinions regarding the provisions of the draft code, such training sessions aimed also at helping attendees improve their knowledge and ease the process of interpretation and application of domestic law provisions<sup>12</sup> to practical situations likely to occur in their professional activity. The purpose of the seminars was to familiarize the participants also with similar international norms in the area of ethics<sup>13</sup>, to broaden their horizon through new perspectives.

## I. Train of trainers session

In preparation for the seminars, ABA/CEELI, in cooperation with the EU-PHARE Twinning Program "Assistance for the Development of the National Institute of Magistrates and the National School for Clerks," organized during September 21-24, 2004 a train-of-trainers session, to develop a core of NSC trainers. Some of them were selected thereafter as workshops moderators. During this session, the participants were provided with copies of the Trainer's Manual, a document prepared by ABA/CEELI with USAID funding<sup>14</sup>. This manual was developed to assist those judges and court clerks who were interested in becoming trainers of the National School for Court Clerks.

<sup>11</sup> Five seminars for the initial training component and five seminars for the continuous training component.

<sup>12</sup> The draft Code of Ethics for Court Clerks, the Internal Regulation of Courts and Prosecutors' Offices and the Statute of Court Clerks – see Appendix 2.

<sup>13</sup> Recommendation 2000(10) of the Council of Europe on Codes of Conduct for Public Servants, the US Model Code of Ethics for Court Personnel – see Appendix 2.

<sup>14</sup> The manual (in Romanian) can be found on the ABA/CEELI website, [www.aba/ceeli.org](http://www.aba/ceeli.org).

## **II. Structure of the seminars**

The seminars lasted one day and a half<sup>15</sup> and consisted of two main sessions. The first part provided for an analysis of case studies, each of them consisting of a scenario related to the interpretation and application of provisions of the draft Code itself. The second part of the seminars focused on discussing and providing a critique of the draft Code. Participants were encouraged to express and share their views about the necessity of such regulation, to comment on its content and to make suggestions and recommendations towards its improvement. Participants identified articles of the draft that should be either formulated differently or eliminated, and made suggestions on provisions that should be added to the draft.

At the end of each seminar, ABA/CEELI distributed evaluation forms. As reflected in their responses, the participants greatly appreciated the use of novel interactive teaching methods, the professionalism of the trainers and the content of the case studies. They pointed out also that the seminar succeeded in maintaining the attention and interest of all participants, stimulated creativity and encouraged debates<sup>16</sup>. Of note, the students of the NSC, while they acknowledging their lack of practice in interpreting and applying ethical norms, emphasized the importance of ethics as a training programs topic.

As a result of the seminars, participants improved their knowledge in the field of professional ethics, clarified their understanding of some domestic law provisions, and acknowledged the importance of ethical standards in their professional practice.

<sup>15</sup> Except for the seminar in Suceava that lasted one day.

<sup>16</sup> See Appendix 5.

### III. Overview of the seminars

	Initial training	Continuous training
<b>PURPOSE</b>	<ul style="list-style-type: none"> <li>• Present the attendees with practical situations reflecting ethical issues.</li> <li>• Correctly apply ethical norms to concrete situations.</li> <li>• Encourage reflection, group discussions and debates to improve content of the draft Code.</li> </ul>	<ul style="list-style-type: none"> <li>• Stimulate awareness of existence and consequences of ethical issues in professional activity.</li> <li>• Improve the interpretation and application of ethical norms to concrete scenarios (drawn from practice).</li> <li>• Encourage reflection, group improve content of the draft Code.</li> </ul>
<b>SCHEDULE</b>	March 10-17, 2005	November 2004 – April 2005
<b>LOCATION</b>	Bucharest, the National School for Clerks	Timisoara, Sibiu, Brasov, Bucharest and Suceava <sup>17</sup>
<b>TRAINERS</b>	<p>Two-member teams were created (one judge, one court clerk)<sup>18</sup>.</p> <p><i>Judges:</i></p> <p><b>Lavinia Curelea</b> – High Court of Cassation and Justice, <b>Dana Cristina Garbovan</b> – First Instance Court of Oradea, <b>Nicoleta Georgescu</b> – Tribunal of Brasov</p> <p><i>Court Clerks:</i></p> <p><b>Gabriela Ciocchina</b> – First Instance Court of Onesti, <b>Mirela Dinu</b> – Tribunal of Vaslui, <b>Simona Cioaba</b> – Court of Appeals of Timisoara, <b>Laura Marilena Creanga</b> – Court of Appeals of Pitesti</p> <p>Prosecutor<sup>19</sup></p> <p><b>Eleonora Nitar</b> – Prosecutor’s Office of the High Court of Cassation and Justice</p>	
<b>WORKING METHOD</b>	<ul style="list-style-type: none"> <li>• The <b>case study</b> method was chosen to ensure interactive seminars and high level participation of all attendees. The method is characterized by presenting participants with <i>scenarios</i> of daily professional life, encouraging them to hold an ongoing dialog, offering the opportunity for all to express their opinions individually, and asking them to explain their opinions and reflect together on the conclusion.</li> <li>• <b>Small working groups</b> debates. The participants were divided in three working groups, in order to foster debates as well as an exchange of opinions among them. Each group appointed a spokesperson to present in plenary session the conclusions of the group discussions. Distinct individual and minority group opinions accompanied by supporting arguments were also presented.</li> <li>• All <b>reference materials</b> were sent in advance to the participants.</li> <li>• All seminars were evaluated through <b>evaluation forms</b> filled out by the participants at the end of each seminar.</li> </ul>	
<b>PARTICIPANTS</b>	<b>87 students</b> of the initial training participated in the debates. The number of participants for each seminar varied between 20 and 25.	The total number of participants was <b>125</b> , and for each seminar varied between 24 and 27.

<sup>17</sup> The regional approach brought together participants from courts under the jurisdictions of the following courts of appeals: Timișoara, Oradea, Craiova, Alba Iulia, Cluj, Brașov, Târgu Mureș, Suceava, Iași and Bucharest.

<sup>18</sup> This approach offered two advantages: 1) special support to court clerk trainers who became more familiar with trainer’s methodology and 2) encouraged debates with participants who felt free to hold discussions in the presence of their peers.

<sup>19</sup> The organizers used for the seminar on continuous training in Bucharest a team consisting of a prosecutor and a court clerk.

## IV. Case studies

At the beginning of each seminar, the moderators explained the teaching methods and the goals of the seminar. In each seminar, the participants discussed three to four case studies, some with more than one scenario<sup>20</sup>, for a total of seventeen case studies.

All hypothetical situations were drawn from daily practice in courts. Participants were asked to identify whether ethical norms were violated and if so, which provisions of the draft Code were infringed. In presenting their answers, attendees were encouraged to study the reference material provided as well, consisting of samples of international laws and regulations governing ethics in court. They were also asked whether the behavior of the court clerk in the case studies was the most appropriate one and if not, which would be the proper conduct under the specific circumstances. The participants' attention was drawn to this technique, new to most of them (especially the experienced court clerks).

In order to facilitate exchange of opinions and arguments, the participants were divided in three working groups. Group members were asked to analyze the situations presented, to identify the legal norms applicable to each scenario (both in domestic and relevant foreign pieces of legislation) and to offer answers to questions raised by the trainers. Their conclusions were presented through an appointed spokesperson for each group. Minority opinions developed with arguments were also encouraged. Through this working methodology, trainers encouraged the participants to express and share their opinions freely with their peers. The seminars offered them the opportunity to improve their theoretical knowledge, as well as to reflect on practical ethical situations that may occur in their professional life.

For the purpose of illustration we present below the most debated case studies<sup>21</sup>.

### *1. The Divorce*

In this case study, the participants discussed a scenario in which a court clerk writes a divorce application for a friend, advises her of the number of copies that should be submitted in court and of the amount of the court fees, and


<sup>20</sup> For example, for the seminar in Bucharest, trainers Eleonora Nitar and Laura Marilena Creanga prepared four case studies with two to three different scenarios each.

<sup>21</sup> For all case studies, see Appendix 1

recommends a prestigious lawyer specialized in divorce cases. She also accepts from her friend, during office hours, a bouquet of flowers and a box of chocolates.

The participants, divided in three groups, were asked to answer this question: through her behavior, was the court clerk guilty of violating provisions of the draft Code of Ethics for Court Clerks? They were also asked to study comparative materials concerning ethics for court personnel.

Participants’ conclusions were that the court clerk violated a number of provisions detailed in the following chart:

	DOMESTIC LEGISLATION
<b>Draft Code of Ethics for Court Clerks</b>	• Art. 4, 5, 6, 9,12,14,16, 19, 25, 26
<b>Internal Regulation of Courts and Prosecutor’s offices</b>	• Art. 45 paragraph 2, 57, 159 paragraph 2 point “f” and “i”
Law <sup>22</sup> on the Statute of Court Clerks	• Art. 76, 78 paragraph 1, 84 point “c”

All groups concluded that the court clerk:

- Violated provisions referring to professionalism, specifically those on the importance and role of the court clerk profession in delivering justice and in fulfilling professional duties seriously and responsibly.
- Should have refrained from disclosing information obtained in the process of fulfilling her professional duties.
- Should have been impartial and observed both parties’ rights (including that of the other spouse) without discrimination.
- Should have refrained from any behavior that may make her vulnerable to influences.
- Should have not accepted gifts from any of the parties.
- Should have not made recommendations to interested parties, specifically names of defense counselors, experts or public notaries.

While discussing this case study, the participants represented that the current language of article 16 (“court clerks shall not accept gifts that may affect their impartiality”) is deficient, because it gives court clerks the possibility to accept such gifts, by claiming that this does not affect their impartiality. The participants’ suggestion was to expressly prohibit court clerks to accept or ask for any gifts, but to specify that gifts from colleagues, friends or relatives are excluded from this category.

Another aspect addressed by the participants was the time when the hypothetical situation took place. In some of the participants’ opinion, if it happened outside the working hours, the court clerk could not be accused of the violation of any of the above-mentioned provisions. Following further discussion, the participants reached the conclusion that the timing of the event had no relevance,

<sup>22</sup> Law no. 567/2004.


and that clerks should refrain from violating ethical norms even outside the working hours.

A lively discussion occurred with respect to the provisions of article 19 (which require court clerks to refrain from extra-professional activities): some participants found it applicable to the situation presented, while others did not. On this occasion, they discussed also the concept of extra-professional activity and its content was explained by the moderators.

Concerning provisions of article 24, the participants addressed the manner in which the prohibition for court clerks to provide advice was addressed by the draft Code. Some of the participants (minority opinion) stated that the applicability of the above-mentioned articles to the case study is questionable, because, in their opinion, the court clerk did not provide legal advice. As a result of explanations offered by the moderators, they concluded that brochures containing basic legal information should be made available to the public, particularly taking into account its current low level of legal literacy.

The participants concluded that the court clerk made use of her legal knowledge in a way that had a negative impact on the image of the judiciary. The participants reviewed the risks taken by court clerks if they violate provisions of article 26 of the draft Code (which specifies that court clerks are prohibited to use their legal knowledge in a way that affects the image of the judiciary), and underlined the difficulty to make a clear demarcation between providing general guidance as opposed to legal advice. They also agreed that she was guilty of committing disciplinary violations, emphasizing on this occasion the lack of correlation between the articles regulating disciplinary violations from the Internal Regulation of Courts and Prosecutor's Offices and the Law on the Status of Court Clerks.

Members of the three groups also reviewed similar provisions identified in the comparative legislation distributed to them. Conclusions are summarized in the chart below:

	<b>INTERNATIONAL COMPARATIVE LEGISLATION</b>
<b>Recommendation 2000(10) of the Council of Europe</b>	Art. 8 point 2, 18, 19, 20, 21
<b>US Model Code</b>	Section 1 points A, B, C, D, Section 2 point F, Section 3 point B paragraphs 2, 6, Section 5 point F, Section 6 point E

Following a review of the comparative legislation, the participants concluded that the court clerk should have:

- Not accepted any undue advantages while fulfilling her professional duties.

- Observed the prohibition to accept or ask for gifts or other benefits and returned the gift.

- Observed the duty to avoid situations which called for favors in return.


The court clerk's entire behavior showed abuse in an official position. The sanction suggested by the participants for the court clerk who violated so many provisions was *reprimand*.

## 2. The draft court decision

In this case study a chief-clerk puts pressure on a session court clerk to type and provide a third party (friend of the chief-clerk) with a draft copy of a decision prepared by the judge. While the court clerk refuses to follow the instructions, invoking legal deadlines that have to be observed, as well as the principle of confidentiality, the third party (the chief-clerk's friend) offers material advantages if her request is granted and the chief-clerk shows her discontent towards her subordinate.

The moderators divided the participants in three groups and asked them to provide comments on the court session clerk's response and on the chief-clerk's behavior, with reference to provisions dealing with professional ethics.

After an analysis of domestic provisions, the participants' conclusions were the following:

	DOMESTIC LEGISLATION	
	<i>CHIEF-CLERK</i>	<i>SESSION COURT CLERK</i>
<b>Draft Code of Ethics</b>	• Art. 4, 5, 6, 9,11, 12, 14, 15,16,19,20,21	• Art.22
<b>Internal Regulation of Courts and Prosecutor's Offices</b>	• Art. 55, 56, 95 point 3, 159 paragraph 2 points "c", "d", "e", "f", "i"	
<b>Law on the Status of Court Clerks</b>	• Art. 76, 78 paragraph 1, 84 points "c", "d", "e", "f", "g", "i"	

The participants unanimously concluded that the chief-clerk violated provisions referring to:

- The duty of court clerks to contribute to the respect and prestige of the judiciary;
- The professionalism of court clerks;
- The obligation of confidentiality. She tried to obtain data and information which she was not entitled to;
- Impartiality (by providing information to one of the parties in a case);
- The prohibition on using one's official position to obtain privileges or advantages;
- The prohibition on receiving or accepting gifts or services.

Some of the participants stated that the chief court clerk also violated provisions referring to the attitude of court clerks in their profession, because she showed her discontent in front of an outsider. The whole conduct of the chief-clerk was abusive.

Participants also pointed out that the chief-clerk exceeded her responsibilities by violating provisions which regulate the procedure under which court files and documents can be consulted by the parties, and committed, in this way, several disciplinary violations such as:

- Intervention or persistence to solve a request.
- Irreverent attitude while fulfilling her professional duties.
- Violation of the obligation of confidentiality.

In discussions of this case with students of the NSC, the participants addressed also the applicability of article 108, paragraph 4, of the Internal Regulation of Courts and Prosecutor's Offices, referring to the procedure for the verification and signing of court decisions. In this context, trainers explained to the attendees the meaning of these provisions, and stressed that disclosure of the content of a court opinion is not allowed before the opinion is signed by a judge.


As a general comment, the students stressed that the attitude of the chief-clerk is condemnable. In their opinion, a superior should be a role model for his/her subordinates. This is extremely important, taking into account a chief's authority and the fact that a subordinate may be exposed to pressures that can lead to intimidation.

In discussing separately the conduct of the session court clerk, the students reached the conclusion that the conduct of the session court clerk was proper, in compliance with provisions of the draft Code of Ethics, and, implicitly, with those of the Internal Regulation of Courts and Prosecutor's Offices and of the Law on the Status of Court Clerks. However, in their opinion, the session court



clerk should have informed the court leadership of the incident, as required by article 22 of the draft Code of Ethics. Also, her refusal should have been more adamant, but this implies that subordination relationships between the chief-clerk and the other court clerks should take place only within the law and that chief-clerks should not be allowed to exceed these limits.

All participants identified relevant provisions from international norms as shown in the chart below:

 INTERNATIONAL COMPARATIVE LEGISLATION	
	<div>CHIEF-CLERK</div> <div>SESSION COURT CLERK</div>
<b>Recommendation 2000(10) of the Council of Europe</b>	<ul style="list-style-type: none"> <li>• Art. 6, 8, 9, 13 paragraph 1,2,3,</li> <li>• Art. 20, 21 point 2, 25 point 2</li> </ul>
<b>US Model Code</b>	<ul style="list-style-type: none"> <li>• Section 1 points A, B, C and F, Section 2 points A, B, Section 3 point A, B sub-point 6, Section 5 point B, G, Section 6 points C, D.</li> <li>• Section 1 point F</li> </ul>

In relation to international norms, most of the participants confirmed that the chief-clerk acted abusively, unlike the court session clerk, and that the latter’s conduct was the correct one and should be followed as a general rule.


A minority opinion presented the fact that, in general, one cannot work without making compromises, and that the attitude of court clerks towards their superiors needs to adjust to their superior’s personality.

Finally, some participants expressed their reservations about a court clerk having to refuse to comply with an „order” given by the chief-clerk, to whom they are subordinated and who may affect their career, as well as their professional evaluation. However, following a discussion with moderators, the quasi-unanimous conclusions were that it is recommendable that novice court clerks show professionalism in their new profession, which will lead, in time, both to reforms of mentalities and to a change of the image the judiciary.

### 3. The wiretap

This case study describes a situation in which a court clerk discloses, during a class reunion, confidential information (in this instance, a wiretap). During the event, the court clerk also complains about the court’s heavy caseload and makes critical comments about a judge’s decision.

The comments offered by the participants focused first on the domestic legislation:

 DOMESTIC LEGISLATION	
<b>Draft Code of Ethics</b>	• Art. 6, 12, 20, 22
<b>Internal Regulation of Courts and Prosecutor's offices</b>	• Art.45 paragraph 1, 159 paragraph 2 points „e” and „f”
<b>Law on Statute of Court Clerks</b>	• Art. 76, 78 paragraph.2, art.84 points „e”, „f”, „g”, „l”.


The participants unanimously concluded that the court clerk should have refrained from:

- Making critical comments about her heavy caseload;
- Disclosing confidential information;
- Publicly expressing her discontent about a court decision in public;
- Expressing her opinion, in an unofficial context, about a document issued by a judge.

One participant had a further opinion and invoked also article 26 (the clerk made use of her legal knowledge in a way that affects the image of the judiciary). Some of the participants referred to provisions of article 8, concluding that the court clerk in question did not serve the judiciary with loyalty, by disclosing confidential information, as well as provisions of article 14 (exposing herself through her conduct to a situation of vulnerability). However, these opinions were not agreed upon by the majority of the participants.

The participants unanimously stressed that, through her conduct, the court clerk violated provisions regulating the obligation of the court clerks to not disclose confidential information acquired while fulfilling their professional duties. Given the extreme seriousness of the court clerk's violations, the participants agreed that the sanction specified by article 159, paragraph 3, point b, of the Internal Regulations should be applied, e.g. *a 5-10% salary cut for a period of between 1 and 3 months.*

Analyzing comparative legislation, members of the groups reached the following conclusions:

 INTERNATIONAL COMPARATIVE LEGISLATION	
<b>Recommendation 2000(10) of the Council of Europe</b>	• Art. 4 point 1, 5 point 2, 9, 11, 22
<b>US Model Code</b>	• Section 2 point A, B, C, G, Section 3 point A, B sub-point 6, Section 5 point E, G


Since provisions of Article 14 of the draft Code of Ethics for Court Clerks were identified as applicable in the case, correlatively, provisions of Article 20, referring to vulnerability to outside influences, can be seen as applicable. A minority opinion was that the court clerk violated also provisions of Article 6, which require public servants not to behave incorrectly.

**In order to characterize the court clerk’s conduct, as it was presented by the case study, the participants chose the following key words: violation of confidentiality, irresponsibility, lack of professionalism.**

**4. The citizens’s request**

In presenting this case study, the trainers asked the participants to comment on the behavior of a court clerk who was approached by an individual asking for guidance and information on where a specific court hearing that he was scheduled to attend was taking place. At first, the court clerk asked the man to leave. However, upon his insisting to obtain the information, the court clerk lost her temper and behaved rudely, calling him illiterate and then continued her way.

Commenting upon the court clerk’s behavior, the participants thought that, through her conduct, the court clerk violated the following provisions contained in the domestic norms:


	DOMESTIC LEGISLATION
Draft Code of Ethics	• Art. 4, 5, 20, 21,27
Internal Regulation of Courts and Prosecutor’s Offices	• Art. 159 paragraph 2 point “d”
Law on Statute of Court Clerks	• Art. 84 point ”d”

The participants unanimously agreed that the court clerk:

- Showed a lack of deference and politeness to the litigant and, through this behavior, seriously affected the prestige of the judiciary.
- Was rude while fulfilling her professional duties.

In a separate opinion, one of the participants said that the court clerk, by refusing to give an answer, violated also Article 8 (referring to the obligation of loyalty and the fulfillment of their duties in good-faith) of the draft Code of Ethics.

Analyzing international comparative materials, members of the groups reached the conclusions presented in the chart below:

	INTERNATIONAL COMPARATIVE LEGISLATION
<b>Recommendation 2000(10) of the Council of Europe</b>	<ul style="list-style-type: none"><li>• Art. 5 paragraph 3, 9</li></ul>
<b>US Model Code</b>	<ul style="list-style-type: none"><li>• Section 5 point B</li></ul>

During the discussions, the participants analyzed the relevance of special circumstances (for example, the possibility that the court clerk was upset for personal reasons) and whether such circumstances should be taken into account in assessing her attitude and establishing the disciplinary sanction. They concluded that the circumstances may be taken into account but they cannot exonerate the court clerk from responsibility.

Furthermore, the moderators offered additional possibilities, such as: “Suppose the chief-clerk had witnessed the incident. What do you think she would have done? What should she have done?” The participants answered that the chief-clerk should have first answered the litigant and, afterwards, should have had a discussion with the court clerk. “Suppose a colleague witnessed the incident. What should she have done?” The participants offered the same answer – she should have assisted the litigant first and, afterwards, should have had a discussion with her colleague. “In such a case, shouldn’t Article 22, 2nd sentence be invoked as well?” (the duty to inform the court leadership of the inappropriate conduct of a court clerk which could negatively affect the court prestige). Most participants represented that this provision is over-restrictive, even immoral, because it encourages and turns into a virtue informing on one’s colleagues. The court clerk’s conduct should be sanctioned only if it was a frequent occurrence.


## 5. The missing file

This case study presents the following situation: A plaintiff, through his lawyer, requests from the head clerk in charge of archives a copy of one of the pages of his petition. The request is approved but the file is with the court session clerk, because the court hearing in the case was set for the next day. The head archives clerk comes to the court session clerk and takes the file, promising to bring it back by the end of the working day. Taking into account that the file was not brought back by 3:20 p.m., the court session clerk tries to contact the head archives clerk, only to learn that the latter had left the building, even though the working hours were not over. Under these circumstances, the court session clerk goes to the archives in order to take back the file, but the file is not found. The next day, during the court hearing, the head archives clerk comes and gives the file to the court session clerk, explaining that, the day before, he forgot the file in the copy machine.

For this case, each group was asked to review the case and answer three questions: 1) Have any norms of the Code of Ethics been violated in the situation presented above? If yes, by whom and what are the violations? 2) What should the court session clerk have done when he was asked for the file? 3) What was the litigant’s perception regarding the issues presented above?

Each group held a collective debate to identify responses to questions 1 through 3.

1) The participants concluded that both court clerks violated ethical norms as follows:

	DOMESTIC LEGISLATION	
	<i>COURT SESSION CLERK</i>	<i>ARCHIVES CLERK</i>
<b>Draft Code of Ethics</b>	• Art. 1, 4, 5, 6, 8, 22	• Art. 4,6
<b>Internal Regulation of Courts and Prosecutor’s offices</b>		• Art. 74, 159 paragraph 2 point b
<b>Law on the Statute of Court Clerks</b>	• Art. 76	• Art. 76


**The court session clerk** should have:

- Asked for a signature before loaning the file;
- Accompanied the archives clerk to the copy machine;
- Fulfilled her professional duties in a responsible manner;
- Informed the court leadership about the incident.

**The archives clerk** should have:

- Showed seriousness and responsibility when she left the court early without giving the file back to the court session clerk.
- Fulfilled her duties with professionalism.

On the basis of international comparative norms, the attendees found the following violations:

	INTERNATIONAL COMPARATIVE LEGISLATION	
	<i>COURT SESSION CLERK</i>	<i>ARCHIVES CLERK</i>
<b>Recommendation 2000(10) of the Council of Europe</b>	• Art. 4 point 1, 5 point 2, 9, 10, 12 point 2, 22 point 2	• Art. 4, 5 point 2, 7, 9, 12
<b>US Model Code</b>	• Section 5 point A and H	• Section 5 point A

They concluded that **the court session** clerk should have:

- Fulfilled her professional duties in compliance with the law and the ethical norms;
- Been impartial and efficient;
- Fulfilled her professional duties at the highest level of her responsibilities;
- Behaved in such a way as to strengthen the public trust in the judiciary because she was not careful about the file;
- Reported the incident to superiors.

**The archives clerk** should have observed the provisions regarding:

- Fulfilling professional duties in compliance with the law and ethical norms;
- Impartiality and efficiency in fulfilling professional duties at the highest level of her responsibilities;
- Using good judgment in the decision-making process;
- The duty to behave in such a way as to maintain and strengthen the public trust in the integrity, impartiality and efficiency of public authorities;
- Obligation to report any violation of the ethical norms.

2) Answering the question of what the court session clerk should have done, the participants represented that the session court clerk should have: a) made the copy herself (however, in practice this is impossible, due to the clerks' heavy caseload), b) informed immediately the court leadership, c) asked her archives colleague about the file, before the working hours were over.

3) Regarding the litigant's perception, in the participants' opinion, litigants would have concluded that the court employees showed a lack of responsibility, blatant negligence and even suspected the court employees and judges of corruption.

## V. Debates

All seminars ended with a debate on *"Draft Code of Ethics for Court Clerks – is it opportune, necessary and improvable? - discussions and suggestions."* During this session, the participants were asked to make comments on the draft Code and proposals for modifications, where necessary. They were asked to identify those articles of the current draft code that should either be formulated differently or eliminated. The moderators encouraged the participants to express their criticisms vis-à-vis the content of the code, their views on the existing regulations and make suggestions for improvement. Prior to the debate, the seminar organizers gave a presentation on the way in which the code was drafted and the rationale followed by the Working Group.

## A. General observations

All participants fully endorsed the usefulness of drafting an additional, separate document, to provide comments and annotations of the Code and clarify concepts such as: „prestige of the judiciary”, „image of the judiciary” (article 5 and article 6), „loyalty” (article 8), „confidentiality” (article 10), „extra-professional activities” (article 9), „decent clothing”, „extravagance” (article. 23), „goods that have been entrusted to them for the purpose of fulfilling their professional duties” (article 24). The commentaries should provide detailed definitions and examples taken from the practice of courts. They also made the following general comments:

- A Rationale should be included in the Code, similar to that contained in Recommendation 2000(10) of the Council of Europe.
- Provisions referring to political activities carried out by court clerks, their professional training and hierarchical reporting should be introduced in the code.
- The Code of Ethics should not repeat provisions already included in other laws.
- The concept of „appearance” should be introduced in the Code of Ethics for Court Clerks, as defined in the Code of Ethics for Magistrates, and court clerks should be careful about protecting the “appearance” of impartiality.
- Provisions referring to the obligation of court clerks to observe their professional oath are not included in the Code.
- Introduction in the Code, following the US Model, of a provision to regulate the court administrative staff’s behavior and procedures to follow when they find themselves in situations where they are offered gifts for fulfilling their professional duties.
- Introduction of a provision, also following the US Model, on private life.
- Regulation of exceptions to the principle of confidentiality, as well as the duration of this obligation.
- The provision requiring court clerks to wear decent clothing and avoid extravagances, which included in the draft Code for Court Clerks, should also be introduced in the Code of Ethics for Magistrates.
- A provision regulating the court clerk’s conduct during court hearings is necessary.

## B. Specific comments

While studying in detail the content of the draft, the participants identified some provisions that require clarification and made the following specific comments<sup>23</sup>:

- Articles 4 and 5 (dealing with the prestige of the judiciary in general) should be combined.
- Some participants suggested that the phrase “that may affect their impartiality” in Article 16 be eliminated.
- The concept of “abuse of position” in article 16 needs to be clearly defined; the current version may create confusion because of its similarity with provisions of the Penal Code.
- Elimination of the term “inclination” in article 18.
- Elimination, in article 8, of the language “to put public interest above all,” because it sounds too rigid and it is impossible to observe.
- A clear definition of the concept of “vulnerability” (article 14).
- Introduction of the wording „in fulfilling their professional duties” in Article 21.
- Introduction of a new article, correlative of Article 21 of the draft Code, referring to the right of court clerks to be treated with respect, calm, courtesy and without arrogance by persons with whom they have contact while fulfilling their professional duties.
- Article 19 contradicts Article 77 of the Statute of Court Clerks, because Article 19 of the draft Code prohibits court clerks from carrying out only those extra-professional activities that may affect the fulfillment of their professional duties or the prestige of the judiciary, while the Statute prohibits all extra-professional activities, except for university teaching (one should mention that the participants were in favor of the provision of the draft Code).
- Following the US Model Code, Chapter VI, “Confidentiality,” should list expressly the confidential information categories.
- Beginning with Article 27,<sup>24</sup> the participants pointed to a lack of consistency between the Statute of Court Clerks and the Regulation on the Organization and Operation of Courts, as far as disciplinary sanctions are concerned.
- Article 16 – referring to the wording „of nature to affect their impartiality,” a distinction needs to be established between „shall not ask for” and „shall not accept,” because court clerks are never allowed to ask for something, while they may accept a gift to the extent it does not affect their impartiality. The article should specify precisely what is of nature to affect their impartiality. In the end, the majority of the participants concluded that the wording „of nature to

<sup>23</sup> When reading the comments made by the participants on specific provisions of the code, one notices the more theoretical approach of the NSC students in interpreting its provisions, while the suggestions made by the experienced court clerks reflect their practical experience in court.

<sup>24</sup> Referring to the application of disciplinary sanctions.



affect their impartiality” should be eliminated from the text, in order to avoid inconsistent interpretations.

- Article 20 should be amended either by eliminating the term „moderation” or by replacing „under no circumstances” with „in an unjustified way.”
- Article 13 should be eliminated because it is redundant with provisions of the Civil Procedures Code.
- Article 26 should be amended or should offer a detailed list, similar to the US Model Code, which specifies that court clerks are not allowed to give legal advice (unauthorized advice); in other participants’ opinion, the article is well written.
- Article 13, referring to self recusal, should be eliminated from the Code, because such situations are covered by provisions of the civil and criminal procedures codes and by the Statute of Court Clerks.
- In the participants’ opinion, Article 17<sup>25</sup> has no connection with professional ethics and should be regulated by other legal norms.
- The first part of the Article 22 generated discussions and the participants unanimously agreed that court clerks should not be allowed to comment on the moral and professional probity of judges, prosecutors or their colleagues. Also, the wording „official context” should be more explicit. The second part of the article, referring to the court clerks’ obligation to report to the court or prosecutors’ office leadership any conduct that may affect the prestige of the judiciary should be eliminated or, if maintained, it should expressly detail what the wording „court leadership” means.
- Article 25, which establishes the interdiction for court clerks to recommend lawyers, experts, public notaries or bailiffs, is seen as too restrictive, and the participants suggested that court clerks be allowed to make such recommendations to close relatives.

## **VI. Conclusion**

The seminars debates emphasized a new and unexplored facet of Romanian court clerks’ activity. For the first time, students as well as experienced court clerks reflected together on their behavior in court and outside the office. They realized that their routine work may place them in situations of vulnerability and at professional risk and, if they do not act in compliance with standards of conduct, they will endanger the fragile image of justice in Romania.

Through their comments and discussions, court clerks addressed the question of the need for such a regulation. Their answer was a resounding

<sup>25</sup> A court clerk shall not conclude, directly or through intermediaries, contracts with courts or prosecutors’ offices, for the supply of services, materials or equipment, and shall not be involved, outside the limits of the law, in negotiations of such contracts.

“yes”. All agreed that such a norm is a step forward in the process of ensuring the appropriate legislative framework for court personnel to function professionally and to contribute to the prestige of the judiciary.

As vital as the existence of such a regulation is the enforcement of its provisions, in order to ensure a proper administration of justice. On this point participants expressed different views on the issue of sanctions applicable to infringements of Code provisions. Some were in favor of the provisions seen as moral obligations and guidelines on professional conduct and with no sanctions applicable in case of violation, while others shared the view that disciplinary sanctions should be applied in case of misconduct. The second opinion prevailed for the SCM. Court clerks who do not comply with the conduct recommended by the Code can be held disciplinary liable and face disciplinary sanctions as specified by the Internal Regulation of Courts and Prosecutor’s Offices and by Law no. 567/2004 on the Status of Court Clerks.

### C. Compilation of comments and recommendations

Conclusions of the reports containing the comments and suggestions of the participants were provided to the Superior Council of Magistrates, the newly appointed body to regulate magistrates’ and court clerks’ professional conduct, with recommendations on which provisions of the draft Code should be amended, eliminated or added.

In March 2005, the Superior Council of Magistrates asked CEELI’s input for the revision of the draft Code of Ethics for Court Clerks and retained 90% of the initial provisions as written by the Working Group created by CEELI and the NSC in 2004. ABA/CEELI prepared a compilation based on the observations of the participants in the seminars and, on March 17 and April 4, 2005, provided SCM with comments on the draft<sup>26</sup>.

<sup>26</sup> See appendix 3.

### III. OUTCOME

On April 26, 2005, The Code of Ethics for Court Clerks was adopted through SCM's decision no.144/2005 and published in the Official Journal no. 382 on May 6, 2005 (date of its becoming effective)<sup>27</sup>.

The next step needs to focus on the implementation of its provisions, ensuring consistency in its application and creating jurisprudence. CEELI has committed to continue to support the efforts of Romanian judicial authorities in this field, with the initiative of drafting a commentary with annotations to the Code of Ethics. Such a document would explain some concepts not clearly defined by the Code. The necessity of drafting such a document resulted from the debates of the seminars (as presented above) and from the participants' suggestions. The purpose of such compilation should be as well to present readers with examples and explanations of some situations envisioned by the Code, thus helping court clerks to better interpret and apply its provisions.

<sup>27</sup> See appendix 4.

## IV. APPENDICES

### 1. Case studies

#### **Case study no. 1**

A.F. works as a court clerk with the Tribunal.

At the request of an acquaintance, B.G., A.F. prepares for her a divorce application and gives her guidance on how to file it - the necessary number of copies, documents that need to be attached to it, the amount of court fees and the working hours of the court president for registration of divorce applications.

Also, A.F. recommends that she hire lawyer C.N., because he is known as the best for divorce cases.

The next day, B.G. invited A.F. to lunch, telling that she wanted to thank her for her kindness. A.F. refused the invitation, explaining that she did not have the time for that. Half an hour later, B.G. comes back and offers A.F. a bunch of flowers and a box of chocolates. After repeated insistences, A.F. accepts the gift, telling her colleagues that it was not polite to say no to B.G.

#### ***Question:***

Do you think that, through her attitude, A.F. violates provisions of the draft Code of Ethics for Court Clerks?

## Case study no. 2

A.B. is a head court clerk. One of her friends, a party in a closed case, asks her to intervene, in order to have the written verdict prepared by the next day, because she was very curious why her claim had been rejected. A.B., together with her friend, goes to the office of the session court clerk in that case and asks her to type the decision urgently. The court clerk explained to her that she has the manuscript of the decision prepared by the judge but that she had just left the court session, and she could not type the decision by the next day, rather in three days at most. The interested party interfered and said that, if necessary, she will reward the court clerk if she types the decision urgently. The court clerk refused categorically such a proposal. However, A.B. insisted she show them at least the manuscript of the decision, so that her friend could see the reasons for the rejection of her claim. The court clerk refuses, invoking confidentiality grounds. A.B. got angry, and told the court clerk that it was not wise to say no to your boss and that she will keep the clerk's attitude in mind.

### *Questions:*

1. What are your comments on the attitude of the court clerk in the case, in relation to provisions of the draft Code of Ethics for Court Clerks?
2. Taking into account the provisions of the draft Code of Ethics for Court Clerks, do you think the attitude of the head clerk is ethical?

## Case study no. 3

On November 13, 2004, the prosecutors' office attached to Tribunal A filed a request to wiretap phone conversations of defendant X, against whom a criminal investigation had been initiated, alleging that he had committed offences related to traffic of influence, punishable under Article 257 of the Penal Code.

The president of Tribunal A. approved the wiretapping of defendant X's conversations, both on his mobile phone no. 0722.... and on his home phone no. 0452....

In keeping with procedures, this preliminary order was delivered in the council chamber, and written up by V.P, chief-clerk of the court criminal division.

On November 15, 2004, V.P. attended a reunion on the occasion of her high school graduation 20<sup>th</sup> anniversary. On that occasion, V.P. complained to colleagues at her table that she was very tired because of extremely heavy case-loads, and that lately, she had been asked by the court leadership to participate

in cases to authorize wiretaps. She explained that, recently, she even had to leave work very late because she had to prepare a preliminary decision that authorized wiretapping of phone conversations of X.

V.P. gave details about the case, stating that, in her opinion, the wiretap should not have been authorized, and the court president should have rejected the request because any of us could be in X's shoes at any time.

***Questions:***

1. Please, comment on the court clerk's attitude taking into account provisions of the draft Code of Ethics for Court Clerks.
2. If you think that there are any violations of the draft Code of Ethics for Court Clerks, please identify them.

**Case study no. 4**

After her court session was over, court clerk T.L. was called by the court president. While she was on her way to the president's cabinet, the court clerk was addressed by a person with a subpoena in hand, who asked where the courtroom was located. Without stopping, the court clerk told the person to leave her alone. The person insisted, walking alongside, explaining that he was called in court for the first time and did not know where to go.

Losing her temper, the court clerk stopped and told him: *"Sir, leave me alone! Do you think I have time to show you where the courtroom is? Can't you read? Oh, God, this country is full of illiterates... And, didn't you see the signs at the entrance?"*..... after which she went on her way, cutting through people milling in the court hall.

***Questions:***

1. Please, comment on the court clerk's attitude taking into account provisions of the draft Code of Ethics for Court Clerks.

**Case study no. 5**

We are in the archives department.

The victim in a criminal case, through his defense attorney, submits to the clerk in charge of archives a request for the copy of a one-page document. The request is approved but the criminal case file is with the court session clerk, because the court hearing for the case has been set for the next day.

The head archives clerk goes to the court session clerk and borrows the file, on condition to bring it back by the end of that working day.

By 3: 20 p.m. the file had not yet been returned. The court session clerk tries to contact the head archives clerk, but he is informed that the latter had left the building, even though the working hours were not over.

Given the circumstances, the court session clerk goes to the archives in order to take back the file. Together with the other archive clerks, he checks all the drawers („windows”), but the file is not found.

The next day, when the file is requested in the courtroom, the parties are informed of the incident of the previous day and are asked to wait until the end of the court hearing.

During the court hearing, the head archives clerk comes and gives the file to the court session clerk, explaining that, the day before, he forgot the file in the copy machine.

### ***Questions:***

1. Have any norms of the draft Code of Ethics been violated in the situation presented above? If yes, by whom and which are the violations?
2. What should the court session clerk have done when he was asked to loan the file for reproduction of a page?
3. In your opinion, what will be the litigants' perception regarding the issues presented above?

### **Case study no. 6**

We are in the court room.

The president of the judge-panel asks that cases be announced in docket order. The court clerk, with a tired and bored face, without standing up, calls up the parties.

Defendant X's attorney mentions that he represents and assists the defendant.

Bewildered, the session clerk asks, aggressively, whether the plaintiff is in court or not. Gesticulating with the microphone in hand, in order to get an answer faster, the session clerk drops the microphone from the amplifier and breaks it. The plaintiff's attorney, visibly irritated, cannot give the answer

expected by the session clerk. Instead, the plaintiff answers, by introducing himself to the court.

After the case has been heard, the court session is suspended, in order to replace the broken microphone.

In another case, after the case summary is presented by the session clerk, who makes also references to the legality of the subpoena procedures, defendant's attorney Y invokes the failure to follow procedures for witness M, proposed by the party he represents, and, to support his claim, submits the subpoena on which it is written "recipient changed address."

The session clerk, amused, informs the defense attorney that the legality of the subpoena procedures refers only to the parties in the case, while the witness did not belong to that category.

***Questions:***

1. Please, comment on the session clerk's conduct from the perspective of provisions of the draft Code of Ethics for Court Clerks.
2. Please, specify if in the above situation the session clerk is guilty of violation of the ethical norms. Please, provide arguments in support of your answer.

**Case study no. 7**

During a phone conversation, A., a close friend of session clerk B., asks her to tell her about the progress of two court decisions, for which the 30-day preparation deadline, specified by the Civil Procedures Code, has been exceeded by a week.

Asking her typist colleagues if they had received for typing the drafts of those decisions, the session clerk finds that, indeed, the two decisions have not been typed, but she does not inform her friend of this herself.

***Questions:***

1. Is the session clerk guilty of violating norms of the draft Code of Ethics?
2. What conduct should the court clerk adopt in such a situation, taking into account the one week delay in preparing the court decisions? What if such delay were of 6 months?



## Case study no. 8

We are in the office of session clerks A.V. and B.M.

L.V., husband of session clerk A.V., who is also the defense attorney in criminal case xxxx, asked her, in the morning, to obtain information about the preparation of an intermediary decision to be delivered in the above-mentioned case.

Also, he asked her to provide him with a copy of that intermediary decision, making comments that the 24-hour deadline set by the Criminal Procedures Code for typing the decision has been exceeded by one day.

Asking her colleague B.M., a session clerk who worked on the above-mentioned case, A.V. finds that B.M. had not completed the documents of the previous court hearing.

B.M. also explains that statements made by A.V.'s husband regarding the exceeding of the deadline are erroneous because the Internal Regulation of Courts specifies a 2-day deadline for preparation of intermediary court decisions.

Also, another court clerk, A.T., informs her that she will prepare the intermediary decision that day "only if she has the time and feels like it, to teach her a lesson."

At the end of the working day, court clerk B.M. gives a copy of the intermediary decision to session clerk A.V. and jokingly tells her that she hopes that A.V.'s husband will not forget the favor. At the same time, court clerk B.M. informs A.V. that the intermediary decision has not been signed by the judge, with whom she has a good relationship, but that there will be no problems, because the judge has never asked her for a rewrite of decisions.

### ***Questions:***

1. Are session clerks A.V. and B.M. guilty of violation of norms of the draft Code of Ethics? What about violation of other legal provisions? Which?
- 2 What conduct should the session clerks have adopted in the above situation?

## **Case study no. 9**

We are in the courtroom and, later on, in front of a court clerk's office.

During the court hearing, while case xxxx was reviewed, the president of the judge panel asks defendant X to submit to the file, by the end of the hearing, copies of the filed documents, in order for those to be communicated to the opposing party together with the subpoena, which will be issued for the next hearing.

After the hearing is over, the session clerk goes out to the court hall together with an office colleague, in order to have a cup of coffee. In the meantime they discuss a dramatic case involving a child, whose case was heard in that court, and the court clerk expresses her conviction that the judge will entrust the child's custody to the father, because „such a mother does not deserve to be granted custody of the child.” During the conversation, defendant X comes to them, interrupting their conversation, and wants to give the documents requested by the judge during the hearing to the session clerk. Irritated, the session clerk shows her discontent, saying that she cannot have a moment of peace to drink her coffee and replies to the defendant that, since he is a law graduate, he should know that documents to be filed with the court should be first registered with the registry department and points him to that department. In response, defendant X criticizes her language and attitude, stating that the mother of the child whom „they are trying” and whom he knows personally, is a special and decent person, and should be the one entitled to child custody.

### ***Questions:***

1. What are your comments on the session clerk's attitude?
2. Did the session clerk, through her conduct, violate any norms of the draft Code of Ethics? If yes, please develop arguments in support of your position.

## **Case study no. 10**

A.N. is a session court clerk in a first instance court and is asked by one of her friends, B.C., to file with the registry judge an application to obtain the return of custody of her minor child, because, due to her very strict work schedule, she could not file it personally. A.N. filed the application, which was assigned to the judge panel with whom A.N. works.

After the first court session, C.C. – former husband of B.C. and defendant in the case – files a request of recusal against A.N. His request is grounded in the fact that A.N. and B.C. are friends since childhood, that A.N.

knows very well the family situation of the two parties and that A.N. and B.C. have been witnessed talking in the hall of the court both on the day before the first court session and immediately after the court session.

A.N. stated that she did not make a self-recusal request in the case because conditions specified by Article 27 of the Civil Procedures Code were not met.

***Questions:***

1. Do you think that A.N. should have filed a self-recusal request in the case?
2. Do you think that A.N. violated in this situation any provisions of the draft Code of Ethics for Court Clerks? If so, which ones?

**Case study no. 11**

C.D, a court clerk, is visited at work by two friends, who invite her out for a soft drink. Since it was half an hour before the end of the working hours, she asked them to wait for her in the office, while she finalizes some documents. Seeing some files on her desk, her friends asked for permission to look through them, to pass the time. C.D accepted and while she was working, her friends were making comments on what they were reading in the files.

At some point, a judge came in the office to give back to the clerk a decision typed with errors and asked her to retype it immediately, and to be more careful, because it was not for the first time that she had made mistakes. Irritated by the observation, C.D replied that other colleagues were making mistakes too. Besides, the decision was very long and, because she had so many decisions to prepare and type as quickly as possible, she could not pay attention to their accuracy.

***Question:***

What are your comments on the court clerk's attitude through the prism of provisions of the draft Code of Ethics for Clerks? Do you think she violated any of these provisions? If so, which ones?

**Case study no. 12**

Through court order no.132 of November 10, 2004, issued by the First Instance Court of B town, C.D. was ordered to pay 2.575.000 Romanian lei per month as alimony for his minor child. Saddled with financial difficulties due to

the payment of old debts, C.D. told X, one of his friends, about his situation, and said that he intends to find a way to delay the payment of the alimony. He showed X. the above mentioned court order.

When X. saw the court order, he told C.D. that two years before he had worked as a procedures agent (currier) with the First Instance Court of B. town, that he was a good friend of court clerk A.D., who had participated in that court session, and that he might be able to help delay enforcement of the court order. He explained that he could ask the court clerk not to garnish C.D's salary. However, he added that any favor has a price.

On November 11, 2004, X. went to the First Instance Court, where he approached court clerk A.D., who had just finished a court session. He went to her office with a bunch of flowers, a box of chocolates and a bag of coffee. After he gave her the flowers, X took the candies and the coffee out of a bag, put them on a small table with a coffee machine, and said that they were a gift from him for all the ladies in that office. Surprised by X's gesture, colleagues of court clerk A.D. thanked him, saying that some good coffee never hurts, while one of them opened the box of chocolates.

Later on, X asked A.D. to go out in the hall because he wanted to discuss something with her „in private.” The two of them left the office, with the court clerk still wearing her robe. They talked near the entrance to the court registry office, then A.D. returned to her office.

### ***Questions:***

1. Was the court clerks' and X's conduct in compliance with ethical rules?
2. Please determine and explain whether in this case study, there are any violations of the draft Code of Ethics for Court Clerks.
3. What consequences could the court clerk's conduct entail?

### **Case study no. 13**

While discussing with her colleagues problems she had with her teeth, court clerk M.A. asked them to recommend a good dentist. One of her colleagues gave her the business card of a dentist, and M.A. made an appointment.

For two weeks, court clerk M.A. was on sick leave and went regularly to the dentist. She told him what her job was and where she was working, and asked the dentist to give her a discount, assuring him that she would never forget this and, given the opportunity, she would return the favor.

Approximately one month after she returned to work, while waiting for the judge-panel to enter the courtroom, M.A. noticed that the dentist, accompanied by counsel X, was among parties and lawyers who were asking to consult their files.

Ignoring counsel Y, who had just asked for file no. 2135, M.A. asked the dentist if she could be of help. He asked her to give him a file and told her that he was a plaintiff in a division of inheritance case. M.A. gave him the requested file, and told him that she wanted to talk to him after the court session.

After the court session was over, M.A. called the dentist and told him that counsel X. was shallow and that, for such a case, counsel Z, the best attorney in inheritance cases, should be hired. Also, she told the dentist that he should file all documents on the civil status of all heirs of the deceased, and should list all assets and debts of the estate. Further on, she advised him to request an expertise, for an accurate evaluation. She gave him the phone number of counsel Z., and offered to keep the dentist informed about the progress of his case.

***Question:***

Please, make comments on the court clerk's conduct and specify whether it complied with provisions of the draft Code of Ethics for Court Clerk.

**Case study no. 14**

**Situation no. 1**

A.H. is a head clerk. Her daughter is a student and needs to write a paper urgently. Since the paper is to be lengthy and she has very little time to do it, A.H. asks C.S., a clerk in the same court, to help her type the paper. C.S. tells her that she has a lot of work and cannot help her. A.H. gets upset, and reminds C.S. that she is her boss and will remember this incident. In order to solve this situation, C.S. tells her that she will stay after hours to help her but, for a price, because this is an extra-professional job.

***Question:***

What are your comments about the behavior of the court clerk and the attitude of the head clerk in relation to the draft Code of Ethics for Court Clerks?

**Situation no. 2**

D.C. is a session clerk and has to type a court decision prepared by the judge. While typing, she discusses the case with an office colleague (C.T.),

expressing her disapproval about the judge who prepared the decision, and making ironical comments on the parties' claims and on the judge's opinion. The next day, C.T. meets with one of the parties in that case and tells him what she found out from her colleague.

***Question:***

Which court clerk violated provisions of the draft Code of Ethics and how?

**Situation no. 3**

B.T. is a session clerk with the Tribunal and is asked by a close friend of hers, L.G., who is the injured party in a criminal fraud case, to give her, for one day, the original copy of a document which was in the file (a sale-purchase contract), because she needs to take it to the financial administration office. Due to their friendship, B.T., without the court president's approval of the request, takes the document out of the file and gives it to the party.

***Question:***

Do you think that B.T. violated, in this situation, any provisions of the draft Code of Ethics for Court Clerks or of other legal norms? If so, which ones?

**Case study no. 15**

**Situation no. 1**

A.B. is a court clerk with the tribunal. M.N., who is A.B.'s sister, asks for her help, because she is filing for divorce. A.B. prepares the divorce application for M.N. and, upon her sister's request, who is unable to leave the office, due to a very strict schedule, files it with the court.

After a hearing date was set for the case, A.B. went to the session court clerk and asked her to pay special attention to this case because it was her sister's. Afterwards, she informed her sister about what she did in the case. At the same time, she advised M.N. on what she should say at the trial. The next day, M.N. brings a gift to A.B. and asks her to give it to the session court clerk. A.B. gives the gift to the session clerk on the next day.

***Question:***

Please, identify what provisions of the draft Code of Ethics for Court Clerks the court clerk violated.

## **Situation no. 2**

M.C. is a head clerk with the Tribunal. D.R., her daughter-in-law, is a lawyer with a very important company in town. Arguing that she cannot come to court because her child is ill, D.R. asks M.C. to find out if a decision in a case involving the company where she is working was prepared and, if yes, to give her a copy of the decision. M.C. gets in touch with the session court clerk and finds out that the decision is not typed yet, but that the judge had given the draft decision to be typed. M.C. asks the typist to type it on a priority basis and, among others, tells her that the court leadership asked her to make recommendations for bonuses.

### ***Questions:***

1. What are your comments about the behavior of the head clerk in relation to the draft Code of Ethics for Court Clerks?
2. In your opinion, is the behavior of the head clerk ethical?

## **Case study no. 16**

### **Situation no. 1**

A.M. is a session clerk in a criminal case which, for reasons that could affect private the life of the injured party, was reviewed behind closed doors, in compliance with Article 290 of the Criminal Procedures Code. After the court hearing was over, A.M. was approached by a journalist and she disclosed to the press details of what she heard in the courtroom.

### ***Question:***

Do you think that A.M. violated any of the provisions of the draft Code of Ethics for Court Clerks? If so, which ones?

### **Situation no. 2**

B.I. is a session court clerk with the Tribunal. In one of the pending cases, the defendant's attorney has a logo-neurosis (he is stammering), which is very amusing for the court clerk, who starts laughing.

### ***Question:***

What are your comments about the court clerk's behavior in relation to provisions included in the draft Code of Ethics for Court Clerks?

### **Situation no. 3**

A.T. is a court clerk in a civil court and must type a preliminary decision suspending the case, due to the fact that the plaintiff did not show up in court. B.F., a friend of hers, pays her a visit in court, together with T.S. B.F. asks A.T. to give her the file, to take a look at it. A.T. agrees to give B.F. the file, and T.S., who was in fact the plaintiff in that case, makes an addition to the complaint, specifying that he wanted the case to be decided in his absence.

#### ***Question:***

Did the court clerk violate any provisions of the draft Code of Ethics for Court Clerks? If so, which ones?

### **Case study no. 17**

#### **Situation no. 1**

A.B. is a session clerk. He lives in the same building as doctor D.D., who has just operated on his child. D.D. asks the court clerk to help him, because he has a pending case in the court where A.B. is a court clerk.

A.B., by taking advantage of the fact that the court clerk scheduled for the session on the D.D.'s case is ill, offers to replace her in court. Following the court session, the judge panel withdrew for deliberations and court clerk A.B., on the pretence that he needed to file some documents, finds each judge's arguments concerning D.D.'s case. The same day, he gives doctor D.D. this information.

#### ***Questions:***

- 1) What are your comments on the court clerk's behavior?
- 2) Which provisions of the draft Code of Ethics for Court Clerks did court clerk A.B. violate?

#### **Situation no. 2**

D.G. came to the Archives Department and asked for a copy of a court decision dating back to 1990. M. D., a court clerk in this department told him to come back in 2-3 days, because she was very busy in that period. D.G. returned shortly before the working hours of the court were over, with a bunch of flowers and a box of chocolate, and asked M.D. to resolve his request sooner.

#### ***Question:***

In your opinion, how was this situation solved? Please, make comments.



## 2. Reference materials provided to the working group members

### **List of materials distributed to the working group members**

- a. The Romanian Code of Ethics for Magistrates
- b. The draft Code of Ethics for Romanian Public Servants (available only in RO version)
- c. The US Code of Conduct for Judicial Employees (available only in EN version)
- d. The Code of Conduct for EU Lawyers
- e. Recommendation no. 2000(10) of the Council of Europe on the Codes of Conduct for Public Servants
- f. The National Association for Court Management - Model of Code of Conduct

## **The Romanian Code of Ethics for Magistrates**

### **- Rationale -**

#### ***MAGISTRATES' CODE OF ETHICS***

Considering the model of other professions and some other legal systems, the Government's Emergency Ordinance no. 179/1999, which modified and completed Law no. 92/1992 on Judicial Organization, mandated the adoption of an ethical code for magistrates, and the Supreme Council of Magistracy is responsible for its adoption.

Whereas, according to the current laws and regulations, this magistrates' representative body does not have its own staff or its own funds to provide the necessary consulting, they have asked for the support of the Ministry of Justice, especially the Department for Organization and Human Resources for Law Courts, in the development of the draft. In order to be aware of the experience of other states, important technical assistance was provided by ABA/CEELI Romania, which made available an impressive quantity of information to the Council's General Secretary. EU experts contributed to the drafting and their comments and suggestions proved to be very useful and gave substantial shape to this document.

Before drafting the Code, the Council received numerous proposals, observations and suggestions from magistrates throughout the country, as well as from the magistrates' associations; they all reflect, through their diversity, not only the interest in such topic but also the various ways of addressing it. Therefore, the basic principles of the draft code were considered useful to be submitted to the Council for approval and decision. It was established that the Magistrates' Code of Ethics, through its provisions, was to develop the magistrates' duties that were already included in the current constitutional and legal provisions in force, as well as in international documents, particularly in the European ones on the status of magistrates. Furthermore, the Council decided that the Ethical Code's rules were to offer evaluation criteria for magistrates' conduct by institutions required to intervene during their professional career; thus, it is not useful nor possible to establish other bodies to control the observance of such rules of conduct through an instrument of such nature.

## ***THE MAGISTRATES' CODE OF ETHICS***

### ***GENERAL PROVISIONS***

**Art. 1** – The judiciary has an essential role in any society based on the principles of the rule of law, and magistrates have special powers, and accordingly, special responsibilities. In exercising such power and responsibility, in their relations with litigants, with the other participants in judicial activities, and with the entire society which confidence in judicial independence and correctness is a priority, magistrates shall have the rights stipulated by law and the obligations also regulated by law.

**Art. 2** – The role of the Code of Ethic is to formulate standards of conduct for magistrates so that it is in conformity with the honor and dignity of their profession.

**Art. 3** – The observance of the standards of conduct as stipulated by the Code of Ethics shall be assessed by the authorities having the competence, under the law, to intervene in the carrying out of the magistrates' professional activities. Violation of such rules may lead to the enforcement, under the law, of disciplinary liability only in the last analysis, when its seriousness requires it.

**Art. 4** – The present Code applies to all magistrates, except for the provisions of Chapter VII, which apply to magistrate prosecutors only.

### ***Chapter I: INDEPENDENCE OF THE JUDICIARY***

**Art. 5** – Magistrates have the duty to uphold the independence of the judiciary, not as a privilege of their own, but as a guarantee for the society, without which the latter cannot exist as a democratic society, organized on the rule of law principles.

They must perform their function objectively and impartially, the law and the general principles of law being their only ground, without being subject to any outside pressure and influence.

In carrying out their activity, magistrates must have such a conduct that does not jeopardize in any way the confidence in their independence.

**Art. 6** – Magistrates are forbidden to be members of political parties or to have public activities with a political character. They may participate in public events only to the extent to which they do not express their political beliefs in such cases.

Magistrates shall not persuade other persons to join a political party, shall not participate in fund-raising for political parties and shall not allow the use of their prestige or image for such purposes.

Magistrates shall not provide any support to a candidate for a public political position.

**Art. 7** – Magistrates must use all means at their disposal so that the participation of their close relatives in political activities should not affect their impartiality and should eliminate any appearance that it might affect their impartiality in performing their professional duties.

**Art. 8** – Magistrates shall not make use of the activities they perform while exercising their duties for the purpose of expressing their political beliefs.

**Art. 9** – The participation, under law, of magistrates in different commissions for the elaboration of draft laws, regulations, international treaties or conventions, or any other type of commissions, as well as their consulting regarding the elaboration of drafts, shall not affect their independence and impartiality or allow for the creation of an appearance that these could be affected.

## ***Chapter II: PROMOTION OF THE RULE OF LAW***

**Art. 10** – Magistrates have the duty to contribute to guaranteeing the supremacy of law and the rule of law state and the citizens' fundamental rights and freedoms.

In criminal trials, they shall observe particularly the presumption of innocence and shall not express their opinion on the guilt or non-guilt of a person in any other way than the forms and means stipulated by law.

Magistrates shall not refuse to resolve a case based on the fact that the law does not provide it, is not sufficient or unclear.

**Art. 11** – Both during procedures performed before them and apart from these, magistrates shall not manifest in any way, any prejudice related to one's race, sex, religion, nationality, socio-economic and cultural status.

They have the duty to protect citizens' equality before the law, ensuring a non-discriminatory legal treatment, to respect and defend the dignity, physical and moral integrity of all participating persons, in any capacity, in judicial procedures. No reason may justify degrading or humiliating treatments or injury of one's physical integrity, health or dignity.

### ***Chapter III: IMPARTIALITY OF MAGISTRATES***

**Art. 12** – Magistrates have the duty to inform the authorities competent to decide on the disclaimer on any cases in which they have or appear to have an interest of any kind.

**Art. 13** – Magistrates shall not provide written or oral advice in litigation, even if such trials are pending in courts or prosecutors’ offices other than those in which they conduct their activities; nor can they publicly express their opinion on pending cases or on litigation for which the prosecutor’s office has been notified.

Magistrates are allowed to plead, under the law, only in their personal cases, the cases of their parents, spouses and children, as well as of persons under their trusteeship or guardianship. Nevertheless, even in such circumstances, they are not allowed to make use of their position in order to influence the court’s decision or the prosecutor’s office’s decision and must prevent creating the appearance that they might influence the decision to be made in any way.

### ***Chapter IV: PERFORMANCE OF PROFESSIONAL AND WORK RESPONSIBILITIES***

**Art. 14** – Magistrates are called upon to perform their professional duties with competence and correctness and to fulfill their administrative obligations provided by law, regulations and duty orders.

**Art. 15** – Magistrates shall have the necessary diligence to perform with speed and with the observance of statutory deadlines, and when the law does not provide these for, within reasonable terms, their assigned works, according to case assignment.

Therefore, they shall observe the work schedule, and they should not get involved in other activities, which performance would affect the time they must spend in fulfilling their professional and work duties. In case there is such a risk, magistrates shall give up the other activities so as not to prejudice the parties’ interests and the image of the judiciary in society.

**Art. 16** – Magistrates shall impose on order and decent behavior during case resolution by adopting a dignified, civilized and impartial attitude towards parties, lawyers, witnesses, experts and other persons with whom they come in contact due to their position.

**Art. 17** – Magistrates shall not disclose or use for purposes other than those directly related to the performance of their profession, information they learn due to their position as magistrates.

In case their court sessions have a confidential character, under the law, magistrates shall keep all official documents in the courthouse or the prosecutors' office, and they should allow consulting of such documents only according to the law and regulations.

**Art. 18** – Magistrates shall use or allow the use of available resources and material means according to their purpose, exclusively in the court's interest.

They have the duty to maintain the devices and equipment that have been entrusted to them in good condition and to return them when they are required to or when they cease their activity.

**Art. 19** – Magistrates have to be continuously concerned with updating their professional knowledge and with maintaining an appropriate level of professional competence.

For this purpose, they shall attend, at least once in 5 years, training sessions for preparation or, as the case may be, professional improvement, organized by the National Institute of Magistrates, by academic institutions in country or abroad, or training sessions organized by the courts of appeals or, as the case may be, by the prosecutors' offices by the courts of appeals.

In addition, they shall continuously improve their theoretical knowledge by their own efforts, update information on national legislation and international law, especially European law.

**Art. 20** – When acting in leadership positions to which they are appointed, magistrates shall be concerned with organizing staff activities and with using resources very efficiently, having initiative and a spirit of responsibility. In the decision-making process, they shall always give priority to the court's interests, or to the prosecutors' office's respectively, and to a good administration of justice.

Magistrates who are court leaders shall verify any acquired information relating to dysfunctions in their activity, to take necessary measures within their power and authority, including measures of sanctioning, and to notify their hierarchical superiors when appropriate measures are beyond their authority.

When they draft or approve proposals for promotion, transfer or appointment of magistrates or when they approve or decide upon hiring

supporting staff, magistrates in a leadership position must examine impartially and objectively the legal criteria relating to the candidates' professional competence and moral qualities.

Magistrates in a leadership position shall not use their authority to intervene, other than as permitted by law, in the development of trials of cases or to influence a decision.

### ***Chapter V: DIGNITY AND HONOR OF THE MAGISTRATE'S PROFESSION***

**Art. 21** – Magistrates have the duty to refrain, both within and apart from their professional duties, from any acts or deeds that might compromise their dignity in court and in society.

Magistrates must uphold the prestige of the judiciary through appropriate conduct in relations with litigants, with colleagues, with the representatives of other state bodies, and with the entire social body.

**Art. 22** – Magistrates are not allowed to claim or to permit to be resolved their personal, familial interests or the interests of any other persons, otherwise than within the legal framework prescribed for all citizens, and are completely forbidden from using their position as magistrates in order to obtain advantages or priority in resolving such interests.

Magistrates are not allowed to intervene in order to influence a decision in any way, or permit others do it in their interest when they seek promotion, transfer or appointment of any kind.

**Art. 23** – Magistrates' relationships must be correct and based on respect and good faith toward their colleagues, irrespective of the positions of such colleagues. Magistrates are not allowed to give their opinion on their colleagues' professional and moral integrity, except for those cases when it affects the image of the judiciary; in such a case, they may inform the persons invested with leadership and responsibility in the court or in the Ministry of Justice, and the Prosecutor's Office by the Supreme Court of Justice respectively.

**Art. 24** – Magistrates may collaborate with publications in the legal, literary, scientific or social fields or in audio-visual programs, only if they are not politically oriented and the image and interest of the judiciary is not affected, nor is public confidence in the judicial system. Information referring to litigation pending in a court or a prosecutors' office, as well as any information on the organization and development of activities in such places will be made available

for the press exclusively through magistrates who have been appointed by the leadership of a court or of a prosecutors' office pursuant to existing regulations.

**Art. 25** – Magistrates are free to create professional associations or other organizations that represent their own interests, promotion of professional training and protection of their status, they may join local, national or international professional associations and may participate in their meetings.

Still, in any of these situations, magistrates should not accept any responsibilities nor should they become involved in activities that might affect negatively their professional activity or that, by their nature, means of financing or manner of action could, in any way, impede the fulfillment of professional duties correctly, impartially and within legal requirements.

### ***Chapter VI: INCOMPATIBLE ACTIVITIES FOR A MAGISTRATE***

**Art. 26** – Magistrates shall not hold in addition to this capacity, any other public or private position, except for teaching activities in academic institutions. Even in such a case, magistrates are not allowed to develop any activity of which they or their close relatives can take advantage of any kind, if they could affect their impartiality or might harm the magistrate's status or might appear to have affected their impartiality.

**Art. 27** – Judges and prosecutors are forbidden to perform, directly or through intermediaries, trading activities, or to participate in the leadership of a trading or business enterprise or of a state controlled agency. They are also forbidden to participate in the administration of such companies or agencies.

**Art. 28** – Magistrates are forbidden to claim or accept, directly or indirectly, for themselves or for others, gifts or promises of gifts, favors or loans, while exercising or in view of exercising their professional responsibilities.

In exercising their professional responsibilities or in view of exercising their professional activities, magistrates may receive legal books offered by their authors or editors, invitations to professional activities, scholarships in the same conditions as other participants.

Magistrates are forbidden to participate, directly or through intermediaries, in pyramid schemes, gambling or investments systems, for which transparency of funds is not provided.

**Art. 29** – Magistrates who want to leave the bench shall immediately inform the leadership of the court or of the prosecutors' office on their decision, in order



to carry out the necessary procedures for dismissal from office. They may not carry out other activities that are incompatible with a magistrate's position until the necessary procedures for dismissal from office have been concluded.

**Art. 30** – Magistrates shall submit a statement on their assets according to the conditions and terms provided by the law.

### ***Chapter VII: SPECIAL PROVISIONS FOR MAGISTRATE PROSECUTORS***

**Art. 31** – Magistrate prosecutors shall carry out their activities according to the principles of legality, impartiality and hierarchical control.

When performing their functions, magistrate prosecutors must show impartiality, focusing their entire activity on discovering the truth.

Prosecutors have the duty to present all evidence necessary for discovering the truth, both in favor of an accusation and of the defense. They must ensure observance of the presumption of innocence of accused persons and of defendants.

**Art. 32** – Prosecutors must execute with speed and fairness orders assigned, pursuant to law, by their hierarchical superiors.

**Art. 33** – Magistrate prosecutors must refrain from intervening in the confidentiality of deliberations and from offering comments on court decisions, except for those included in the reasoning of the legal ways of appeal exercised according to law.

# **The US Code of Conduct for Judicial Employees**

Effective January 1, 1996

## **Introduction**

This Code of Conduct applies to all employees of the Judicial Branch except Justices; judges; and employees of the United States Supreme Court, the Administrative Office of the United States Courts, the Federal Judicial Center, the Sentencing Commission, and Federal Public Defender offices.<sup>1</sup> As used in this code in canons 3F(2)(b), 3F(5), 4B(2), 4C(1), and 5A, a member of a judge's personal staff means a judge's secretary, a judge's law clerk, and a courtroom deputy clerk or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff.<sup>2</sup>

Contractors and other non-employees who serve the Judiciary are not covered by this code, but appointing authorities may impose these or similar ethical standards on such non-employees, as appropriate. The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions concerning the application and interpretation of this code. Employees should consult with their supervisor and/or appointing authority for guidance on questions concerning this code and its applicability before a request for an advisory opinion is made to the Committee on Codes of Conduct. In assessing the propriety of one's proposed conduct, a judicial employee should take care to consider all relevant canons in this code, the Ethics Reform Act, and other applicable statutes and regulations 3 (e.g., receipt of a gift may implicate canon 2 as well as canon 4C(2) and the Ethics Reform Act gift regulations). Should a question remain after this consultation, the affected judicial employee, or the chief judge, supervisor, or appointing authority of such employee, may request an advisory opinion from the Committee. Requests for advisory opinions may be addressed to the Chairman of the Committee on Codes of Conduct in care of the General Counsel, Administrative Office of the United States Courts, One Columbus Circle, N.E., Washington, D.C. 20544.

Adopted September 19, 1995 by the Judicial Conference of the United States

## **Code of Conduct for Judicial Employees**

**Effective January 1, 1996**

### **CANON 1: A JUDICIAL EMPLOYEE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY AND OF THE JUDICIAL EMPLOYEE'S OFFICE**

An independent and honorable Judiciary is indispensable to justice in our society. A judicial employee should personally observe high standards of conduct so that the integrity and independence of the Judiciary are preserved and the judicial order, or by the appointing authority.

### **CANON 2: A JUDICIAL EMPLOYEE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES**

A judicial employee should not engage in any activities that would put into question the propriety of the judicial employee's conduct in carrying out the duties of the office. A judicial employee should not allow family, social, or other relationships to influence official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee should not use public office for private gain.

### **CANON 3: A JUDICIAL EMPLOYEE SHOULD ADHERE TO APPROPRIATE STANDARDS IN PERFORMING THE DUTIES OF THE OFFICE**

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the judicial employee's appointing authority, the following employee's office reflects a devotion to serving the public. Judicial employees should require adherence to such standards by personnel subject to their direction and control. The provisions of this code should be construed and applied to further these objectives. The standards of this code shall not affect or preclude other more stringent standards required by law, by court standards apply:

A. A judicial employee should respect and comply with the law and these canons. A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons.

Note: A number of criminal statutes of general applicability govern federal employees' performance of official duties. These include:

18 U.S.C. 201 (bribery of public officials and witnesses);  
18 U.S.C. 211 (acceptance or solicitation to obtain appointive public office);  
18 U.S.C. 285 (taking or using papers relating to government claims);  
18 U.S.C. 287 (false, fictitious, or fraudulent claims against the government);  
18 U.S.C. 508 (counterfeiting or forging transportation requests);  
18 U.S.C. 641 (embezzlement or conversion of government money, property, or records);  
18 U.S.C. 643 (failing to account for public money);  
18 U.S.C. 798 and 50 U.S.C. 783 (disclosure of classified information);  
18 U.S.C. 1001 (fraud or false statements in a government matter);  
18 U.S.C. 1719 (misuse of franking privilege);  
18 U.S.C. 2071 (concealing, removing, or mutilating a public record);  
31 U.S.C. 1344 (misuse of government vehicle);  
31 U.S.C. 3729 (false claims against the government).

In addition, provisions of specific applicability to court officers include:

18 U.S.C. 153, 154 (court officers embezzling or purchasing property from bankruptcy estate);  
18 U.S.C. 645 (embezzlement and theft by court officers);  
18 U.S.C. 646 (court officers failing to deposit registry moneys);  
18 U.S.C. 647 (receiving loans from registry moneys from court officer).

This is not a comprehensive listing but sets forth some of the more significant provisions with which judicial employees should be familiar.

B. A judicial employee should be faithful to professional standards and maintain competence in the judicial employee's profession.

C. A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including the general public, and should require similar conduct of personnel subject to the judicial employee's direction and control. A judicial employee should diligently discharge the responsibilities of the office in a prompt, efficient, nondiscriminatory, fair, and professional manner. A judicial employee should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a manner that improperly favors any litigant or attorney, nor should a judicial employee imply that he or she is in a position to do so.

D. A judicial employee should avoid making public comment on the merits of a pending or impending action and should require similar restraint by personnel

subject to the judicial employee's direction and control. This proscription does not extend to public statements made in the course of official duties or to the explanation of court procedures. A judicial employee should never disclose any confidential information received in the course of official duties except as required in the performance of such duties, nor should a judicial employee employ such information for personal gain. A former judicial employee should observe the same restrictions on disclosure of confidential information that apply to a current judicial employee, except as modified by the appointing authority.

E. A judicial employee should not engage in nepotism prohibited by law.

Note: See also 5 U.S.C. 3110 (employment of relatives);  
28 U.S.C. 458 (employment of judges' relatives).

F. Conflicts of Interest.

(1) A judicial employee should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a judicial employee knows that he or she (or the spouse, minor child residing in the judicial employee's household, or other close relative of the judicial employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the judicial employee's ability properly to perform official duties in an impartial manner.

(2) Certain judicial employees, because of their relationship to a judge or the nature of their duties, are subject to the following additional restrictions:

(a) A staff attorney or law clerk should not perform any official duties in any matter with respect to which such staff attorney or law clerk knows that:

(i) he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) he or she served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law had served (during such association) as a lawyer concerning the matter, or he, she, or such lawyer has been a material witness;

(iii) he or she, individually or as a fiduciary, or the spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding;

(iv) he or she, a spouse, or a person related to either within the third degree of relationship,<sup>4</sup> or the spouse of such person (A) is a party to the proceeding, or an officer, director, or trustee of a party; (B) is acting as a lawyer in the proceeding; (C) has an interest that could be substantially affected by the outcome of the proceeding; or (D) is likely to be a material witness in the proceeding;

(v) he or she has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

(b) A secretary to a judge, or a courtroom deputy or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff, should not perform any official duties in any matter with respect to which such secretary, courtroom deputy, or court reporter knows that he or she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person (i) is a party to the proceeding, or an officer, director, or trustee of a party; (ii) is acting as a lawyer in the proceeding; (iii) has an interest that could be substantially affected by the outcome of the proceeding; or (iv) is likely to be a material witness in the proceeding; provided, however, that when the foregoing restriction presents undue hardship, the judge may authorize the secretary, courtroom deputy, or court reporter to participate in the matter if no reasonable alternative exists and adequate safeguards are in place to ensure that official duties are properly performed. In the event the secretary, courtroom deputy, or court reporter possesses any of the foregoing characteristics and so advises the judge, the judge should also consider whether the Code of Conduct for United States Judges may require the judge to recuse.

(c) A probation or pretrial services officer should not perform any official duties in any matter with respect to which the probation or pretrial services officer knows that:

(i) he or she has a personal bias or prejudice concerning a party;

(ii) he or she is related within the third degree of relationship to a party to the proceeding, or to an officer, director, or trustee of a party, or to a lawyer in the proceeding;

(iii) he or she, or a relative within the third degree of relationship, has an interest that could be substantially affected by the outcome of the proceeding.

(3) When a judicial employee knows that a conflict of interest may be presented, the judicial employee should promptly inform his or her appointing authority. The appointing authority, after determining that a conflict or the appearance of a conflict of interest exists, should take appropriate steps to restrict the judicial employee's performance of official duties in such matter so as to avoid a conflict or the appearance of a conflict of interest. A judicial employee should observe any restrictions imposed by his or her appointing authority in this regard.

(4) A judicial employee who is subject to canon 3F(2) should keep informed about his or her personal, financial and fiduciary interests and make a reasonable effort to keep informed about such interests of a spouse or minor child residing in the judicial employee's household.

(5) A member of a judge's personal staff should inform the appointing judge of any circumstance or activity of the staff member that might serve as a basis for disqualification of either the staff member or the judge, in a matter pending before the judge.

CANON 4: IN ENGAGING IN OUTSIDE ACTIVITIES, A JUDICIAL  
EMPLOYEE SHOULD AVOID THE RISK OF CONFLICT WITH OFFICIAL  
DUTIES, SHOULD AVOID THE APPEARANCE OF IMPROPRIETY, AND  
SHOULD COMPLY WITH DISCLOSURE REQUIREMENTS

A. Outside Activities. A judicial employee's activities outside of official duties should not detract from the dignity of the court, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court or office the judicial employee serves. Subject to the foregoing standards and the other provisions of this code, a judicial employee may engage in such activities as civic, charitable, religious, professional, educational, cultural, vocational, social, fraternal, and recreational activities, and may speak, write, lecture, and teach. If such outside activities concern the law, the legal system, or the administration of justice, the judicial employee should first consult with the appointing authority to determine whether the proposed activities are consistent with the foregoing standards and the other provisions of this code.

B. Solicitation of Funds. A judicial employee may solicit funds in connection with outside activities, subject to the following limitations:

(1) A judicial employee should not use or permit the use of the prestige of the office in the solicitation of funds.

(2) A judicial employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising

campaign. A member of a judge's personal staff should not solicit any court personnel to contribute funds to any such activity under circumstances where the staff member's close relationship to the judge could reasonably be construed to give undue weight to the solicitation.

(3) A judicial employee should not solicit or accept funds from lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, except as an incident to a general fund-raising activity.

### C. Financial Activities.

(1) A judicial employee should refrain from outside financial and business dealings that tend to detract from the dignity of the court, interfere with the proper performance of official duties, exploit the position, or associate the judicial employee in a substantial financial manner with lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, provided, however, that court reporters are not prohibited from providing reporting services for compensation to the extent permitted by statute and by the court. A member of a judge's personal staff should consult with the appointing judge concerning any financial and business activities that might reasonably be interpreted as violating this code and should refrain from any activities that fail to conform to the foregoing standards or that the judge concludes may otherwise give rise to an appearance of impropriety.

(2) A judicial employee should not solicit or accept a gift from anyone seeking official action from or doing business with the court or other entity served by the judicial employee, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judicial employee may accept a gift as permitted by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder. A judicial employee should endeavor to prevent a member of a judicial employee's family residing in the household from soliciting or accepting any such gift except to the extent that a judicial employee would be permitted to do so by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder.

Note: See 5 U.S.C. 7353 (gifts to federal employees). See also 5 U.S.C. 7342 (foreign gifts);

5 U.S.C. 7351 (gifts to superiors).

(3) A judicial employee should report the value of gifts to the extent a report is required by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.



Note: See 5 U.S.C. app. 6, 101 to 111 (Ethics Reform Act financial disclosure provisions).

(4) During judicial employment, a law clerk or staff attorney may seek and obtain employment to commence after the completion of the judicial employment. However, the law clerk or staff attorney should first consult with the appointing authority and observe any restrictions imposed by the appointing authority. If any law firm, lawyer, or entity with whom a law clerk or staff attorney has been employed or is seeking or has obtained future employment appears in any matter pending before the appointing authority, the law clerk or staff attorney should promptly bring this fact to the attention of the appointing authority.

**D. Practice of Law.** A judicial employee should not engage in the practice of law except that a judicial employee may act pro se, may perform routine legal work incident to the management of the personal affairs of the judicial employee or a member of the judicial employee's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal work does not present an appearance of impropriety, does not take place while on duty or in the judicial employee's workplace, and does not interfere with the judicial employee's primary responsibility to the office in which the judicial employee serves, and further provided that:

(1) in the case of pro se legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings);

(2) in the case of family legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings) and does not involve the entry of an appearance in a federal court;

(3) in the case of pro bono legal services, such work  
a) is done without compensation; (b) does not involve the entry of an appearance in any federal, state, or local court or administrative agency; (c) does not involve a matter of public controversy, an issue likely to come before the judicial employee's court, or litigation against federal, state or local government; and (d) is reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards and the other provisions of this code.

Judicial employees may also serve as uncompensated mediators or arbitrators for nonprofit organizations, subject to the standards applicable to pro bono practice of law, as set forth above, and the other provisions of this code.

A judicial employee should ascertain any limitations imposed by the appointing judge or the court on which the appointing judge serves concerning the practice of law by a former judicial employee before the judge or the court and should observe such limitations after leaving such employment.

Note: See also 18 U.S.C. 203 (representation in matters involving the United States); 18 U.S.C. 205 (claims against the United States); 28 U.S.C. 955 (restriction on clerks of court practicing law).

E. Compensation and Reimbursement. A judicial employee may receive compensation and reimbursement of expenses for outside activities provided that receipt of such compensation and reimbursement is not prohibited or restricted by this code, the Ethics Reform Act, and other applicable law, and provided that the source or amount of such payments does not influence or give the appearance of influencing the judicial employee in the performance of official duties or otherwise give the appearance of impropriety. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by a judicial employee and, where appropriate to the occasion, by the judicial employee's spouse or relative. Any payment in excess of such an amount is compensation.

A judicial employee should make and file reports of compensation and reimbursement for outside activities to the extent prescribed by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Notwithstanding the above, a judicial employee should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the United States, provided, however, that court reporters are not prohibited from receiving compensation for reporting services to the extent permitted by statute and by the court.

Note: See 5 U.S.C. app. 6, 101 to 111 (Ethics Reform Act financial disclosure provisions); 28 U.S.C. 753 (court reporter compensation). See also 5 U.S.C. app. 7, 501 to 505 (outside earned income and employment).

## CANON 5: A JUDICIAL EMPLOYEE SHOULD REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

A. Partisan Political Activity. A judicial employee should refrain from partisan political activity; should not act as a leader or hold any office in a partisan political organization; should not make speeches for or publicly endorse or oppose a partisan political organization or candidate; should not solicit funds for or contribute to a partisan political organization, candidate, or event; should

not become a candidate for partisan political office; and should not otherwise actively engage in partisan political activities.

**B. Nonpartisan Political Activity.** A member of a judge's personal staff, clerk of court, chief probation officer, chief pretrial services officer, circuit executive, and district court executive should refrain from nonpartisan political activity such as campaigning for or publicly endorsing or opposing a nonpartisan political candidate; soliciting funds for or contributing to a nonpartisan political candidate or event; and becoming a candidate for nonpartisan political office. Other judicial employees may engage in nonpartisan political activity only if such activity does not tend to reflect adversely on the dignity or impartiality of the court or office and does not interfere with the proper performance of official duties. A judicial employee may not engage in such activity while on duty or in the judicial employee's workplace and may not utilize any federal resources in connection with any such activity.

Note: See also 18 U.S.C. chapter 29 (elections and political activities).

1 Justices and employees of the Supreme Court are subject to standards established by the Justices of that Court. Judges are subject to the Code of Conduct for United States Judges. Employees of the AO and the FJC are subject to their respective agency codes. Employees of the Sentencing Commission are subject to standards established by the Commission. Federal public defender employees are subject to the Code of Conduct for Federal Public Defender Employees. When Actually Employed (WAE) employees are subject to canons 1, 2, and 3 and such other provisions of this code as may be determined by the appointing authority.

2 Employees who occupy positions with functions and responsibilities similar to those for a particular position identified in this code should be guided by the standards applicable to that position, even if the position title differs. When in doubt, employees may seek an advisory opinion as to the applicability of specific code provisions.

3 See Guide to Judiciary Policies and Procedures, Volume II, Chapter VI, Statutory and Regulatory Provisions Relating to the Conduct of Judges and Judicial Employees.

4 As used in this code, the third degree of relationship is calculated according to the civil law system to include the following relatives: parent, child, grandparent, grandchild, great grandparent, great grandchild, brother, sister, aunt, uncle, niece and nephew.

# **The Code of Conduct for EU Lawyers**

## **Code of Conduct for Lawyers in the European Union**

### **1. Preamble**

#### ***1.1. The Function of the Lawyer in Society***

In a society founded on respect for the rule of law the lawyer fulfils a special role.

His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he is trusted to assert and defend and it is his duty not only to plead his client's cause but to be his adviser. A lawyer's function therefore lays on him a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards: the client; the courts and other authorities before whom the lawyer pleads his client's cause or acts on his behalf; the legal profession in general and each fellow member of it in particular; the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society

#### ***1.2. The Nature of Rules of Professional Conduct***

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognized as essential in all civilized societies. The failure of the lawyer to observe these rules must in the last resort result in a disciplinary sanction.

1.2.2. The particular rules of each Bar or Law Society arise from its own traditions.

They are adapted to the organization and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

### ***1.3. The Purpose of the Code***

1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of «double deontology» as set out in Article 4 of the E.C. Directive 77/249 of 22nd March 1977.

1.3.2. The organizations representing the legal profession through the CCBE propose that the rules codified in the following articles be recognized at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area; be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area; be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonization.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to his cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he belongs to the extent that they are consistent with the rules in this Code.

### ***1.4. Field of Application Ratione Personae***

The following rules shall apply to lawyers of the European Union and the European Economic Area as they are defined by the Directive 77/249 of 22nd March 1977.

### ***1.5. Field of Application Ratione Materiae***

Without prejudice to the pursuit of a progressive harmonization of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

(a) all professional contacts with lawyers of Member States other than his own;

(b) the professional activities of the lawyer in a Member State other than his own, whether or not the lawyer is physically present in that Member State.

## ***1.6. Definitions***

In these rules:

“Home Member State” means the Member State of the Bar or Law Society to which the lawyer belongs.

“Host Member State” means any other Member State where the lawyer carries on cross-border activities.

“Competent authority” means the professional organization(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

## ***2. General Principles***

### ***2.1. Independence***

2.1.1. The many duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the court or third parties.

2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.

### ***2.2. Trust and Personal Integrity***

Relationships of trust can only exist if a lawyer’s personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

### ***2.3. Confidentiality***

2.3.1. It is of the essence of a lawyer’s function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

2.3.2. A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

2.3.3. The obligation of confidentiality is not limited in time.

2.3.4. A lawyer shall require his associates and staff and anyone engaged by him in the course of providing professional services to observe the same obligation of confidentiality.

#### ***2.4. Respect for the Rules of Other Bars and Law Societies***

Under the laws of the European Union and the European Economic Area a lawyer from another Member State may be bound to comply with the rules of the Bar or Law Society of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Member organizations of CCBE are obliged to deposit their codes of conduct at the Secretariat of CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat.

#### ***2.5. Incompatible Occupations***

2.5.1. In order to perform his functions with due independence and in a manner which is consistent with his duty to participate in the administration of justice a lawyer is excluded from some occupations.

2.5.2. A lawyer who acts in the representation or the defense of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.

2.5.3. A lawyer established in a Host Member State in which he wished to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

#### ***2.6. Personal Publicity***

2.6.1. A lawyer is entitled to inform the public about his services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.

2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

## ***2.7. The Client's Interest***

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of his client and must put those interests before his own interests or those of fellow members of the legal profession.

## ***2.8. Limitation of Lawyer's Liability towards his Client***

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his liabilities towards his client in accordance with rules of the Code of Conduct to which he is subject.

## **3. Relations with clients**

### ***3.1. Acceptance and Termination of Instructions***

3.1.1. A lawyer shall not handle a case for a party except on his instructions. He may, however, act in a case in which he has been instructed by another lawyer who himself acts for the party or where the case has been assigned to him by a competent body. The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him when the specific circumstances show that the identity, competence and authority are uncertain.

3.1.2. A lawyer shall advise and represent his client promptly, conscientiously and diligently.

He shall undertake personal responsibility for the discharge of the instructions given to him. He shall keep his client informed as to the progress of the matter entrusted to him.

3.1.3. A lawyer shall not handle a matter which he knows or ought to know he is not competent to handle, without co-operating with a lawyer who is competent to handle it.

A lawyer shall not accept instructions unless he can discharge those instructions promptly having regard to the pressure of other work.

3.1.4. A lawyer shall not be entitled to exercise his right to withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

### ***3.2. Conflict of Interest***

3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.



3.2.2. A lawyer must cease to act for both clients when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where his independence may be impaired.

3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of a breach of confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

3.2.4. Where lawyers are practicing in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

### ***3.3. Pactum de Quota Litis***

3.3.1. A lawyer shall not be entitled to make a pactum de quota litis.

3.3.2. By «pactum de quota litis» is meant an agreement between a lawyer and his client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

3.3.3. The pactum de quota litis does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of competent authority having jurisdiction over the lawyer.

### ***3.4. Regulation of Fees***

3.4.1. A fee charged by a lawyer shall be fully disclosed to his client and shall be fair and reasonable.

3.4.2. Subject to any proper agreement to the contrary between a lawyer and his client, fees charged by a lawyer shall be subject to regulation in accordance with the rules applied to members of the Bar or Law Society to which he belongs. If he belongs to more than one Bar or Law Society the rules applied shall be those with the closest connection to the contract between the lawyer and his client.

### ***3.5. Payment on Account***

If a lawyer requires a payment on account of his fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved. Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

### ***3.6. Fee Sharing with Non-Lawyers***

3.6.1. Subject as after-mentioned a lawyer may not share his fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws of the Member State to which the lawyer belongs.

3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

### ***3.7. Cost Effective Resolution and Availability of Legal Aid***

3.7.1. The lawyer should at all times strive to achieve the most cost effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

3.7.2. A lawyer shall inform his client of the availability of legal aid where applicable.

### ***3.8. Clients funds***

3.8.1. When lawyers at any time in the course of their practice come into possession of funds on behalf of their clients or third parties (hereinafter called «client's funds») it shall be obligatory:

3.8.1.1. That client's funds shall always be held in an account of a bank or similar institution subject to supervision of Public Authority and that all clients' funds received by a lawyer should be paid into such an account unless the client explicitly or by implication agrees that the funds should be dealt with otherwise.

3.8.1.2. That any account in which the client's funds are held in the name of the lawyer should indicate in the title or designation that the funds are held on behalf of the client or clients of the lawyer.

3.8.1.3. That any account or accounts in which client's funds are held in the name of the lawyer should at all times contain a sum which is not less than the total of the client's funds held by the lawyer.

3.8.1.4. That all funds shall be paid to clients immediately or upon such conditions as the client may authorize.

3.8.1.5. That payments made from client's funds on behalf of a client to any other person including:

a) payments made to or for one client from funds held for another client;

b) payment of the lawyer's fees, be prohibited except to the extent that they are permitted by law or are ordered by the court and have the express or implied authority of the client for whom the payment is being made.

3.8.1.6. That the lawyer shall maintain full and accurate records, available to each client on request, showing all his dealings with his client's funds and distinguishing client's funds from other funds held by him.

3.8.1.7. That the competent authorities in all Member States should have powers to allow them to examine and investigate on a confidential basis the financial records of lawyer's client's funds to ascertain whether or not the rules which they make are being complied with and to impose sanctions upon lawyers who fail to comply with those rules.

3.8.2. Subject as aftermentioned, and without prejudice to the rules set out in 3.8.1 above, a lawyer who holds client's funds in the course of carrying on practice in any Member State must comply with the rules relating to holding and accounting for client's funds which are applied by the competent authorities of the Home Member State.

3.8.3. A lawyer who carries on practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member State concerned comply with the requirements of the Host Member State to the exclusion of the requirements of the Home Member State. In that event he shall take reasonable steps to inform his clients that he complies with the requirements in force in the Host Member State.

### ***3.9. Professional Indemnity Insurance***

3.9.1. Lawyers shall be insured at all times against claims based on professional negligence of an extent which is reasonable having regard to the nature and extent of the risks which each lawyer may incur in his practice.

3.9.2. When a lawyer provides services or carries out practice in a Host Member State, the following shall apply:

3.9.2.1. The lawyer must comply with any Rules relating to his obligation to insure against his professional liability as a lawyer which are in force in his Home Member State.

3.9.2.2. A lawyer who is obliged so to insure in his Home Member State and who provides services or carries out practice in any Host Member State shall use his best endeavors to obtain insurance cover on the basis required in his Home Member State extended to services which he provides or practice which he carries out in a Host Member State.

3.9.2.3. A lawyer who fails to obtain the extended insurance cover referred to in paragraph 3.9.2.2 above or who is not obliged so to insure in his Home Member State and who provides services or carries out practice in a Host Member State shall in so far as possible obtain insurance cover against his professional liability as a lawyer whilst acting for clients in that Host Member State on at least a basis equivalent to that required of lawyers in the Host Member State.

3.9.2.4. To the extent that a lawyer is unable to obtain the insurance cover required by the foregoing rules, he shall inform such of his clients as might be affected.

3.9.2.5. A lawyer who carries out practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member States concerned comply with such insurance requirements as are in force in the Host Member State to the exclusion of the insurance requirements of the Home Member State. In this event he shall take reasonable steps to inform his clients that he is insured according to the requirements in force in the Host Member State.

## **4. Relations with the Courts**

### ***4.1. Applicable Rules of Conduct in Court***

A lawyer who appears, or takes part in a case before a court or tribunal in a Member State, must comply with the rules of conduct applied before that court or tribunal.

### ***4.2. Fair Conduct of Proceedings***

A lawyer must always have due regard for the fair conduct of proceedings. He must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyer without the express consent by the other party's lawyer.

### ***4.3. Demeanor in Court***

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of his client honorably and fearlessly without regard to his own interests or to any consequences to himself or to any other person.

### ***4.4. False or Misleading Information***

A lawyer shall never knowingly give false or misleading information to the court.

#### ***4.5. Extension to Arbitrators etc.***

The rules governing a lawyer's relations with the courts apply also to his relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

### **5. Relations between layers**

#### ***5.1. Corporate Spirit of the Profession***

5.1.1. The corporate spirit of the profession requires a relationship of trust and cooperation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behavior harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognize all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

#### ***5.2. Co-operation Among Lawyers of Different Member States***

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which he is not competent to undertake. He should in such case be prepared to help his colleague to obtain the information necessary to enable him to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organizations, competences and obligations of lawyers in the Member States concerned.

#### ***5.3. Correspondence Between Lawyers***

5.3.1. If a lawyer sending a communication to a lawyer in another Member State wishes it remain confidential or without prejudice he should clearly express this intention when communicating the document.

5.3.2. If the recipient of the communication is unable to ensure its status as confidential or without prejudice he should return it to the sender without revealing the contents to others.

#### ***5.4. Referral Fees***

5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to himself.

#### ***5.5. Communication with Opposing Parties***

A lawyer shall not communicate about a particular case or matter directly with any person whom he knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

#### ***5.6. (Deleted by decision of the CCBE Plenary Session in Dublin on December 6th, 2002)***

#### ***5.7. Responsibility for Fees***

In professional relations between members of Bars of different Member States, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

#### ***5.8. Training Young Lawyers***

In order to improve trust and co-operation amongst lawyers of different Member States for the clients' benefit there is a need to encourage a better knowledge of the laws and procedures in different Member States. Therefore, when considering the need for the profession to give good training to young lawyers, lawyers should take into account the need to give training to young lawyers from other Member States.

### ***5.9. Disputes amongst Lawyers in Different Member States***

5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct he shall draw the matter to the attention of his colleague.

5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.

5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

## **Recommendation no. 2000(10) of the Council of Europe on the Codes of Conduct for Public Servants**

*(Adopted by the Committee of Ministers at its 106th Session on 11 May 2000)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that public administrations play an essential role in democratic societies and that they must have at their disposal suitable personnel to carry out properly the tasks which are assigned to them;

Considering that public officials are the key element of a public administration, that they have specific duties and obligations, and that they should have the necessary qualifications and an appropriate legal and material environment in order to carry out their tasks effectively;

Convinced that corruption represents a serious threat to the rule of law, democracy, human rights, equity and social justice, that it hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;

Having regard to the recommendations adopted at the 19th and 21st Conferences of European Ministers of Justice (Valletta, 1994 and Prague, 1997 respectively);

Having regard to the Programme of Action against Corruption adopted by the Committee of Ministers in 1996;

Having regard to Recommendation No. R (81) 19 of the Committee of Ministers of the Council of Europe on the access to information held by public authorities;

Having regard to Recommendation No. R (2000) 6 of the Committee of Ministers of the Council of Europe on the status of public officials in Europe;

In accordance with the Final Declaration and the Plan of Action adopted by the heads of state and government of the Council of Europe at their Second Summit, held in Strasbourg, on 10 and 11 October 1997;

Recalling in this respect the importance of the participation of non-member states in the Council of Europe's activities against corruption and



welcoming their valuable contribution to the implementation of the Programme of Action against Corruption;

Having regard to Resolution (97) 24 on the twenty guiding principles for the fight against corruption;

Having regard to Resolutions (98) 7 and (99) 5 authorizing and respectively adopting the Enlarged Partial Agreement establishing the Group of States against Corruption (GRECO), which aims at improving the capacity of its members to fight corruption by following up compliance with their undertakings in this field;

Convinced that raising public awareness and promoting ethical values are valuable as means to prevent corruption,

Recommends that the governments of member states promote, subject to national law and the principles of public administration, the adoption of national codes of conduct for public officials based on the model code of conduct for public officials annexed to this Recommendation; and

Instructs the Group of States against Corruption (GRECO) to monitor the implementation of this Recommendation.

## **The Model Code of Conduct for Public Officials**

### *Structure*

47. The Model Code is so structured that it states a number of general principles before setting out more specific guidance. It starts with application and interpretation provisions, states the object of the code and sets out the general principles. It then deals with the following specific matters: reporting breaches of the code, conflict of interest, declaration of interests, incompatible outside interests, political or public activity, protection of the public official's privacy, gifts, reaction to improper offers, susceptibility to influence by others, misuse of official position, information held by public authorities, public and official resources, integrity checking, supervisory accountability, leaving the public service, dealing with former public officials and, finally, observance of the code and sanctions.

### *Style*

48. The code offers guidance. It addresses public officials and members of the public. It is intended to be frequently referred to and read. It is therefore not drafted in the style of a law or regulation. Rather it offers practical advice and explanations to readers who are not necessarily learned nor legally trained. It

nevertheless tries to be reasonably precise since breach of its provision could result in disciplinary proceedings.

### *Provisions*

49. In adopting the provisions of the code, a State may need to adapt its provisions to meet the particular requirements of the State's public service.

## **Interpretation and application**

### Article 1

50. This article says the code applies to all public officials and defines "public official" as a person employed by a public authority.

51. The term "public official" is drawn widely. However the provisions of this article and the code as a whole do not cover the exercise of private functions or services, whether done by public officials or not. Thus, private contractors remunerated from public revenues would not be covered, but the code is intended to cover the exercise of public functions on a private basis, such as, in some countries: notaries, public registers, etc. States themselves will have to decide the extent of the term "public authority".

52. In accordance with paragraph 4, the provisions of the Model Code do not apply to publicly elected representatives, members of governments and holders of judicial office given the particular nature of the functions they perform.

53. The GMC considered that it was necessary to draw a clear distinction between public officials who exercise functions within public administration or a public sector entity on the one hand, and ministers and elected representatives who are political figures responsible before parliament and ultimately to the voters. Thus, for instance, the principle of political neutrality recognized in paragraph 2 of Article 4 could not be applied to the latter.

54. Similarly, holders of judicial office are also excluded from the scope of this code. In certain countries prosecutors, on account of the nature of the functions that they perform may also be considered as holders of judicial office. Indeed the principle of judicial independence is incompatible with some of the principles stated in this code such as for instance the principle of accountability to the immediate hierarchical superior enshrined in Article 10.

55. Notwithstanding the exclusion of these categories of persons from the application of this code, it would be desirable for States to adopt ethical standards appropriate for the functions performed by these persons. With this in mind, States can decide to draw inspiration from the present code.

56. Moreover, States may decide to apply or adapt the provisions of this Code, totally or in part, to other categories of persons not included in Article 1.

## Article 2

57. The code applies to a public official from the time he or she is informed of its provisions and certifies he has been so informed.

58. The application of this provision shall be adapted in the case of civil services based on the career system where conditions of service are governed by a civil service statute, where the code is enacted by the competent authority (responsible for public officials), for example the Minister for Public Administration or the Minister of the Interior, and the code would thus be an integral part of the regulations that apply to public officials.

## Object of the Code

## Article 3

59. The article states the aims of the code, i.e.: to specify standards of integrity and conduct, help public officials meet those standards and tell the public what it is entitled to expect from its public officials.

60. Given that public administrations play an essential role in democratic societies, that public officials are the key element thereof and since corruption undermines the citizens' trust in their administration, the code aims at eliminating any ambiguity about the general attitude of the administration towards corruption and clearly expresses what is expected from every employee in that respect.

61. The Code of conduct fills the gap between on the one hand often abstract legal regulations as to the principles of behavior and, on the other hand the requirement of guidance in numerous difficult situations of an employed person's day-to-day life. It seeks to eliminate areas of uncertainty by offering either directly applicable instructions on how to cope with a given situation, or indications on where and how to receive such instructions. The Code can offer specific guidance in situations where the employed person may feel that he has to deal with a conflict of interest.

62. In addition, the Code contributes to greater transparency in the functioning of public administration by clearly informing citizens of what they are entitled to expect from public officials.

## General Principles

### Articles 4 – 11

63. These articles set out the public official's general obligations to act lawfully, obediently, ethically and loyally. He or she is expected to be honest, impartial, conscientious, fair and just, and to act politically neutral, only in the public interest and with courtesy to all with whom he or she has contact.

64. He or she must not allow his or her private interests to affect, or appear to affect, his or her public position nor take undue advantage of that position. The term "private interest" is explained in Article 13. It is for States to define the expression "undue advantage". However, it should be understood in a broad sense, as including not only advantages offered or given to the public official but also the avoidance of any disadvantages or burdens imposed upon him or her. Undue advantages are usually of an economic nature but may also be of a non-material nature.

65. What is important for the purposes of Article 8 is that a public official or a third person, for example a relative, should not be placed in a better position or acquire that benefit. Examples of undue advantage are money, holidays, loans, food and drink, a case handled more quickly than others or better career prospects.

66. The public official's behavior should enhance the public's regard for the public service and he or she should be accountable for his or her conduct. Thus, Article 6 forbids him to act arbitrarily to the detriment of any person, group of person or body. In the course of the discussions, the GMC examined whether this Article should also forbid acting for the benefit of a person, group or body without any advantage for the public official or ensuing prejudice for a third party. However, in the light of the principles of impartiality and lawfulness stated respectively in Articles 5 and 7, the GMC did not consider it necessary to include expressly such a prohibition.

67. His or her handling of information must respect both the right to official information and the need for appropriate confidentiality. The expression "necessary confidentiality" should be understood in a flexible manner, as allowing adaptation to the context of each member State, and in the light of the legal rules concerning the use of confidential information. Transparency is a key element in the fight against corruption. The principle contained in Article 11 does not aim at restricting unnecessarily the access of the public to official documents.

## **Reporting**

### **Article 12**

68. This article requires the public official to report, in accordance with the law, whenever he or she believes he or she is being required to act inconsistently with the code.

69. If, having reported the matter in accordance with the law, he or she is not satisfied with the response, he or she may take the matter up in writing with the relevant head of the public service, namely the person ultimately responsible for the public service. This will obviously vary from country to country, for example the Minister for Public Administration or the Minister of the Interior. When the matter has been taken as far as procedures allow, the article makes clear that the public official must then comply with lawful instructions.

70. Moreover, paragraph 2 requires public officials to report to the competent authorities in accordance with the law any breach of the code by another public official of which he or she becomes aware. The GMC was aware of the practical difficulties that the application of this provision in public administration could entail in certain cases since it could create tensions among public officials. However, it considered that the passive or tolerant attitude of public officials regarding those breaches would be more harmful for public administration and society as a whole.

71. Unlawful or criminal activities are to be reported to the appropriate authorities. Once reported, the investigation will be the responsibility of the competent authorities and not of the public official.

72. For its part the public administration must ensure that no prejudice is caused to a public official who makes such a report on reasonable grounds and in good faith.

## **Conflict of interest**

### **Article 13**

73. This article explains what is a private interest and how a conflict can arise between a public official's public duties and his or her private interest. He or she must be aware of the possibility of a conflict arising, take steps to avoid it, disclose it to his supervisor at the earliest opportunity and comply with any proper instruction to resolve it. Whenever required to do so, he or she should state whether or not a conflict arises.

## **Declaration of interests**

### **Article 14**

74. The article explains that certain public officials may be lawfully required periodically to declare their personal or private interests. This obligation has a preventive character. It is generally imposed upon officials holding high level posts. However, the main criterion should be the nature of the functions performed and the responsibilities relating thereto. This may lead States to impose such obligations upon certain officials even if they hold posts of a modest hierarchical level.

75. Periodic declarations of interest are essential for the effectiveness of this measure. Keeping this in mind, the code provides that the declaration will be made not only upon appointment but also at regular intervals thereafter determined by national legislation. Any change in the situation affecting the public official's interests will imply the obligation for him or her to submit a new declaration.

76. Since this obligation represents an interference on private life it needs to be always justified. It is the duty of public administration to ensure the confidentiality of such declarations which in turn is guaranteed by Article 17.

## **Incompatible outside interests**

### **Article 15**

77. The article states that public officials are not to engage in any activities incompatible with the proper performance of official functions. If unsure, they should seek the advice of their superiors.

78. Subject to the law, the public official should seek his or her employer's approval to undertake certain activities, positions or functions outside the public service. This requirement is made subject to law because some countries have regulations governing the taking of outside or second jobs. It should be noted that this principle does not prohibit a public official from having a second job outside the public service.

79. The article also requires the public official to comply with any lawful requirement to declare his or her affiliation to organizations that could detract from his or her position or the proper performance as a public official.

## **Political or public activity**

### **Article 16**

80. This article enjoins the public official to be careful firstly not to allow his or her political activities to impair his or her impartiality or loyalty and secondly not to let himself or herself be used for partisan political purposes. He or she should comply with any restriction on political activity lawfully imposed by reason of his or her duties as a public official.

## **Protection of the public official's privacy**

### **Article 17**

81. Like other citizens, public officials have a right to privacy and have a duty to respect the privacy of other public officials. This article makes that clear and specifically requires declarations made in accordance with the code to be kept confidential unless otherwise required by law.

82. The right to respect for private life is not an absolute one. It might be necessary to interfere or restrict the exercise of this right in order to attain certain legitimate objectives such as the prevention of crime and the protection of the rights of others. Consequently, the general principle of confidentiality of declarations recognized in this Article could be lifted for instance in the framework of criminal investigations or disciplinary procedures affecting the public official.

## **Gifts**

### **Article 18**

83. This article makes clear that the public official should not seek or accept any gift or benefit for himself or anyone else that could influence, or appear to influence, the carrying out of his or her duties. The public official should never accept either gifts that constitute a real or apparent reward for actions or omissions in the exercise of his or her functions. It is essential to preserve the citizens' trust in the impartiality of public administration. Such trust would be undermined if the citizen observes or is under the impression that the public official, whose salary should be paid in principle out of the public budget, receives compensation from private individuals in exchange for the performance of his or her duties.

84. The Code allows for some exceptions to the general prohibition of gifts, in respect of conventional hospitality or minor gifts. This expression comprises for instance, modest invitations to food and drinks, calendars, low price pens,

advertising materials, small stationary... It is for each country to establish the criteria to differentiate between what is acceptable and the gifts which fall within the general prohibition rule. Often the value of the gift or invitation is used as a criterion, it being understood that whenever the value is lower than the threshold, the gift or invitation could be acceptable. However, low value may not always be a proper criterion. He or she should be alert however to the possibility of even a generally permitted advantage giving rise to a conflict of interest in particular circumstances. Thus, gifts or invitations offered repeatedly, even if low value could affect the public official's impartiality in the exercise of his or her functions.

85. During discussions, the GMC considered the possibility of introducing a general obligation of declaring all gifts, even those of low value. Once the gifts are declared, the hierarchical superior or other competent authority would decide which gifts the public official was authorized to accept. The GMC preferred however, not to include such a general system in a model code, it being understood that each country is free to adopt more restrictive provisions than those contained in the code.

86. When social circumstances prevent him or her refusing an advantage, the public official should promptly report the fact and circumstances of his acceptance to his immediate superior and comply with any direction for disposal.

87. When in doubt, the public official should seek advice from his or her superior.

88. Elementary prudence would require that the request and the advice should be made in writing.

### **Reaction to improper offers**

#### **Article 19**

89. Public officials need to know how to react appropriately when improperly offered a gift or benefit. This article gives specific guidance on what he or she should do in such circumstances.

### **Susceptibility to influence by others**

#### **Article 20**

90. Public officials can become the targets of attempts to compromise them. The purpose of this article is to alert them to the danger by advising them that they should not put themselves in a position of obligation to return a favor, nor conduct themselves in their official or private lives in such a way that they become susceptible to the improper influence of others.



## **Misuse of official position**

### **Article 21**

91. The public official is enjoined firstly not to offer any advantage connected with his position as an official unless lawfully authorized to do so, and secondly not to try to influence anyone for his or her own private benefit by using his or her official position or by offering a personal advantages. These advantages can be offered directly or indirectly.

## **Information held by public authorities**

### **Article 22**

92. In the course of serving the common good, the public service creates, acquires and holds a great deal of information, the value or significance of which may not always be obvious. The handling of information held by public authorities is a frequent cause of difficulty. This article provides guidance in four distinct aspects.

93. First, the public official should disclose information only in accordance with applicable rules and requirements.

94. Second, he or she must protect the security and confidentiality of information, not only for which he or she is responsible but also of which he or she becomes aware.

95. Third, the public official should not seek official information to which he or she should not have access, nor should he or she make improper use of information come by in his or her employment.

96. Fourth, he or she has an equally strong duty not to withhold official information that may or should be released nor to provide false or misleading information.

## **Public and official resources**

### **Article 23**

97. This article requires the public official to manage and make use of personnel resources on one hand and of public property, facilities, services and financial resources on the other effectively, efficiently and economically. Unauthorized use for private purposes is forbidden, when authorization is given according to the law. Thus, for instance, the public official should not, without proper authorization, use the official car for private travel, or the office telephone for

private calls, or ask his or her secretary to do work unrelated to his or her official duties.

98. In this connection, the GMC considered the use by public officials of fidelity programmes organized by airlines, hotel chains, and by other service providers. Thus, for instance, whenever the public official enjoys a margin of discretion in the choice of the airline for an official journey, this article requires the public official to be careful to choose without being influenced by personal considerations to the detriment of the economic interest of the public administration as defined above.

### **Integrity checking**

#### **Article 24**

99. Experience shows the importance of carrying out integrity checks or acting on them in order to avoid long-term integrity problems in the public service. This article therefore requires the public official responsible for recruitment, promotion or posting to make sure that appropriate integrity checks are carried out as lawfully required.

100. Again, he or she is enjoined to seek appropriate advice if the results of the checks make it unclear how to proceed.

### **Supervisory accountability**

#### **Article 25**

101. The notion that every person in a supervisory position should be responsible and accountable for the conduct of those he or she supervises has a significant effect on the integrity of the public service.

102. This article lays a dual responsibility on the supervisor or manager. He or she should manage or supervise in accordance with the policies and purposes of the public service and he or she should be answerable for the failings of his staff if he or she has not taken reasonable steps to prevent them.

103. The article goes on to give specific guidance. The supervisor or manager should take steps to prevent corruption by enforcing the rules, providing education or training, being alert to signs of financial or other difficulties and setting a personal example.

## **Leaving the public service**

### **Article 26**

104. If it is in the public interest that people with experience of public administration should be able to take up appointment outside the public service, it is equally important that the taking up of appointment elsewhere should not cause suspicion of impropriety. The guidance provided in this article therefore aims to allay suspicion: that the advice, decisions or actions of the public official could be influenced by the hope or expectation of future employment with a particular employer; or that the employer might be gaining an unfair advantage over competitors by employing a public official who had access to information that competitors regard as their own commercial secrets or that relates to proposed developments in government policy affecting them.

105. Accordingly, the public official should not take improper advantage of his official position to obtain a job outside the public service. He or she should be careful to avoid the possibility of conflict of interest arising from the prospect of future employment. For an appropriate period he or she should avoid acting or advising in matters in which he or she was involved as a public official. Nor should he use or disclose confidential information acquired as an official. Finally he or she should comply with any rules that apply to accepting appointments after leaving the public service.

## **Dealing with former public officials**

### **Article 27**

106. This Article forbids public officials to grant former public officials preferential treatment or privileged access to the public service as this would be contrary to the principles stated in this code such as, for instance, those in Article 5, paragraphs 2, 7 and 9.

107. This provision does not concern the cases where national legislation grants former public officials certain advantages such as, for instance, the use of public facilities like holiday camps, preferential or free fares awarded to public administration, etc.

## **Observance of the Code and sanctions**

### **Article 28**

108. This article first states the authority under which it is issued, a matter that will vary from country to country. It then reminds the official of the duty to conduct himself or herself in accordance with the code and therefore to become

and remain familiar with its provisions. He or she is urged to seek advice when unsure of how to proceed.

109. The article then points out that subject to Article 2, paragraph 2, the code forms part of the official's terms of employment and that failure to comply with it may lead to disciplinary action.

110. The official who has responsibilities for negotiating terms of employment is reminded of his or her duty to include in them a provision that the code forms part of those terms.

111. The supervisor or manager is made responsible for ensuring that those under him or her observe the code and for initiating disciplinary action for failure to comply with it.

112. The public administration is under the obligation to review at regular intervals the provisions of this code so as to ensure that they are still appropriate.

# **The National Association for Court Management - Model of Code of Conduct**

## **Model Code of Conduct**

### ***Introduction***

The National Association for Court Management (NACM) recognizes the importance of ethical conduct by its members in the administration of justice. NACM members hold positions of public trust and are committed to the highest standards of conduct. NACM members observe these standards of conduct to preserve the integrity and independence of the judiciary. The NACM Code embodies our dedication to upholding and increasing the public's confidence in the judicial branch of government, and also reflects our commitment to promoting integrity within our association and profession. NACM's members subscribe to the following Code of Conduct.

### ***Article I. Abuse of Position and Conflict of Interest***

- A. Members shall not use or attempt to use their official positions to secure unwarranted privileges or exemptions for that member or any other person.
- B. Members shall not accept, agree to accept, dispense, or solicit any gift or favor based upon an understanding that the official actions of the member would be influenced thereby.
- C. Members shall act so that they are not unduly affected or appear to be affected by kinship, position, or influence of any party or person.
- D. Members shall not request or accept any compensation or fee beyond that received from their employer for work done in the course of their public employment. However, members may engage in outside employment as long as it does not conflict with the performance of their official responsibilities or violate this code.
- E. Members shall use the resources, property, and funds under their control judiciously and solely in accordance with prescribed legal procedures.
- F. Members shall avoid conflicts of interest, or the appearance of conflicts, in the performance of their official duties.

## ***Article II. Confidentiality***

- A. Members shall not disclose to any unauthorized person confidential information.
- B. Members shall not give legal advice unless specifically required to do so as part of their official position.

## ***Article III. Political Activity***

- A. Members are free to participate in political campaigns/organizations during nonworking hours if such activity does not use, or appear to use, the member's official position or court in connection with such activities.
- B. Members who obtain their official positions by means of election are exempted from the provisions above to the extent that the member is known as the incumbent while seeking reelection and may cite appropriate judicial branch experience while campaigning.

## ***Article IV. Performance of Duties***

- A. Members should carry out their responsibilities to the public in a timely, impartial, diligent, and courteous manner, strictly adhering to the principles embodied in this code.
- B. Members shall not discriminate on the basis of, nor manifest by words or conduct, a bias or prejudice based upon race, color, religion, national origin, gender, or other groups protected by law, in the conduct of service to the court and public.
- C. Members shall enforce or otherwise carry out any properly issued rule or order of court and shall not exceed that authority except to perform other duties of their positions.
- D. Members shall promote ethical conduct as prescribed by this code and report any improper conduct by any persons to appropriate authorities.
- E. Members shall support and protect the independence of the judicial branch of government. Members shall also protect the public's interest and justice for all persons.
- F. Members shall uphold the Constitution, laws, and legal regulations of the United States and all other governments they serve and never be a party to their evasion.
- G. Members shall promote the growth and development of professional court management by improving their work skills and supporting research and development in the field.
- H. Members shall avoid any activity that would reflect adversely on their position or court.
- I. Members shall immediately report to appropriate authorities any attempt to induce them to violate these standards.

### 3. Reference materials provided to the participants

List of materials distributed to the participants

- a. The draft Code of Ethics for Court Clerks
- b. The Internal Regulation of Courts and Prosecutors' Offices (available RO version only)
- c. The Law no.567/2004 on the Statute of Court Clerks (available RO version only)
- d. Recommendation 2000(10) of the Council of Europe on Codes of Conduct for Public Servants
- e. The US Model Code of Ethics for Court Personnel

# The Draft Code of Ethics for Court Clerks

*Motto: The purpose of a code of ethics is to provide a model for conduct, and to illustrate what professional honor and dignity represent.  
To respect your profession means to respect yourself by respecting others.  
This is why any code of ethics appeals, first, to people and their conscience and needs to be upheld through free will.*

## I. Preamble

Article 1. The ethical conduct of court personnel is critical to the quality of justice in Romania, its transparency, accountability, integrity and independence and to acquiring and strengthening public confidence in the justice system.

Article 2. The purpose of the present code is to establish rules governing court clerks' moral integrity and the conduct they should adopt, as well as to inform the public about the conduct it is entitled to expect from court clerks.

Article 3. The present code applies to court clerks and other categories of administrative staff working in courts and in prosecutors' offices attached to these courts.

## II. Prestige of the judiciary

Article 4. Ethical conduct of court clerks is essential to the delivery of justice in Romania and to building and maintaining public confidence in the judiciary.

Article 5. Court clerks have the duty to contribute to and protect the prestige of the judicial branch.

## III. Professionalism

Article 6. Court clerks shall be mindful of the importance of their activity and of the role of their profession in the delivery of justice. They shall fulfill their duties with diligence and in a responsible fashion.

Article 7. Court clerks shall be highly qualified professionals, and shall seek ongoing improvements to their professional qualifications.



Article 8. Court clerks shall serve the judiciary with loyalty, by placing public interest above all else and fulfilling their duties in good faith.

#### IV. Confindeality

Article 9. Court clerks shall never disclose or use information acquired in their official capacity for purposes other than those related to the performance of their professional duties.

Article 10. The obligation of confidentiality applies to court clerks even after they cease employment with the court or prosecutors' office.

Article 11. Court clerks shall refrain from attempting to obtain data or information that are not related to their professional obligations.

#### V. Impartiality

Article 12. In performing their responsibilities, court clerks shall be impartial and observe the procedural rights and guarantees of all parties, without discrimination.

Article 13. A clerk shall recuse him/herself any time he/she is in a conflict of interest situation as specified by law.

#### VI. Abuse of position and conflict of interests

Article 14. In performing their duties, court clerks shall refrain from any type of behavior that could make them vulnerable to attempts at influencing the performance of their professional obligations.

Article 15. Court clerks may not use their official position in order to obtain privileges, for themselves or for others, outside those privileges permitted by law.

Article 16. Court clerks shall not accept or ask for gifts or favors that could affect their impartiality in performing their duties.

Article 17. Court clerks shall not contract, directly or through intermediaries, with courts or prosecutors' offices to supply services, materials or equipment, and shall not be involved in negotiating such contracts, unless this is part of their professional duties as specified by law.

## VII. Conduct within and outside the workplace

Article 18. Court clerks shall show dedication and devotion to their profession.

Article 19. Court clerks shall refrain from carrying out extra-professional activities, which may affect the fulfillment of their professional duties or the prestige of the judiciary.

Article 20. Court clerks shall be even-tempered and shall not express, under any circumstances, their disapproval of individuals with whom they have contacts while performing their professional duties.

Article 21. Court clerks shall be respectful, calm, polite, and never condescending in their contacts with litigants, judges, prosecutors, lawyers, colleagues as well as with any other individual.

Article 22. Court clerks may express their opinion on the legality and soundness of documents prepared by the court or prosecutors' office where they work, as well as on the professional probity and morality of judges, prosecutors and their colleagues, but only in the context of their professional responsibilities. However, they have the duty to inform the court or prosecutors offices leadership of any conduct that may negatively affect the prestige of the judiciary.

Article 23. Court clerks shall have a proper and decent appearance, and shall avoid extravagant behavior.

Article 24. Court clerks shall protect goods they are entrusted with to perform their professional duties, and use them only for these purposes.

Article 25. Court clerks shall not refer anyone, even if asked to do so, to lawyers, experts, notaries, bailiffs or any other individual who practices a profession related to the delivery of justice

Article 26. Court clerks shall not make use of their knowledge of the law in ways that could jeopardize the image of the judiciary.

## VIII. Final provisions

Article 27. Violation of provisions of the present Code entails disciplinary liability of court clerks and the other categories of administrative staff of courts and prosecutors' offices, as specified by law.

# **Model Code of Conduct for Non-Judicial Court Employees**

## ***Introduction***

The holding of public employment in the court system is a public trust justified by the confidence that the citizenry reposes in the integrity of officers and employees of the judicial branch. A court employee, faithful to that trust, therefore shall observe high standards of conduct so that the integrity and independence of the courts may be preserved. Court employees shall carry out all duties assigned by law and shall put loyalty to the principles embodied in this Code above loyalty to persons or parties. A court employee shall uphold the Constitution, laws and legal regulations of the United States, the State of and all governments therein, and never be a party to their evasion. A court employee shall abide by the standards set out in this Code and shall endeavor to expose violations of this Code wherever they may appear to exist.

## ***Scope***

1) Each jurisdiction must determine exactly which employees shall be covered by this Code. The Code should apply to all employees who directly or indirectly affect the court's operation. A suggested listing of such employees would include: court clerks, docket clerks, data processing personnel, bailiffs and judicial secretaries, as well as court managers and their staffs. This list is intended to be illustrative and does not imply that other employees should be omitted. For example, if janitors in the court building have contact with the public or have the authority to purchase supplies for the court, then the Code should apply to these employees as well.

2) This Code is not intended to apply to law clerks, who should be held to a higher standard of conduct, nor to court reporters, who are bound by the Code of Professional Conduct of the National Shorthand Reporters Association.

3) The term, "court employee," includes within its scope those court employees who are also court managers.

4) The term, "court manager," includes within its scope all court employees who have important supervisory responsibilities. Each jurisdiction must identify the particular court employees who function as managers within that court system.

## ***Section One: Abuse of Position***

A) No employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for the employee or others.

B) No employee shall accept, solicit, or agree to accept any gift, favor or anything of value based upon any understanding, either explicit or implicit, that the official actions, decisions or judgment of any employee would be influenced thereby. Gifts that do not violate this prohibition against abuse of position are further regulated in Section Three, Subsection B.6.

C) No employee shall discriminate by dispensing special favors to anyone, whether or not for remuneration, nor shall any employee so act that the employee is unduly affected or appears to be affected by kinship, rank, position or influence of any party or person.

D) No employee shall request or accept any fee or compensation, beyond that received by the employee in his or her official capacity, for advice or assistance given in the course of his or her public employment.

E) Each employee shall use the resources, property and funds under the employee's official control judiciously and solely in accordance with prescribed statutory and regulatory procedures.

F) Each employee shall immediately report to the appropriate authority any attempt to induce him or her to violate any of the standards set out above.

### ***Section Two: Confidentiality***

A) No court employee shall disclose to any unauthorized person for any purpose any confidential information acquired in the course of employment, or acquired through unauthorized disclosure by another.

B) Confidential information includes, but is not limited to, information on pending cases that is not already a matter of public record and information concerning the work product of any judge, law clerk, staff attorney or other employee including, but not limited to, notes, papers, discussions and memoranda.

C) Confidential information that is available to specific individuals by reason of statute, court rule or administrative policy shall be provided only by persons authorized to do so.

D) Every court employee shall report confidential information to the appropriate authority when the employee reasonably believes this information is or may be evidence of a violation of law or of unethical conduct. No court employee shall be disciplined for disclosing such confidential information to an appropriate authority.

E) Court managers should educate court employees about what information is confidential and, where appropriate, should designate materials as confidential.

F) Court employees are not precluded from responding to inquiries concerning court procedures, but a court employee shall not give legal advice. Standard court procedures, such as the method for filing an appeal or starting a small claims action, should be summarized in writing and made available to litigants. All media requests for information should be referred to the court employee designated for that purpose.

G) No court employee shall either initiate or repeat ex parte communications from litigants, witnesses or attorneys to judges, jury members or any other person.

H) A former court employee should not disclose confidential information when disclosure by a current court employee would be a breach of confidentiality.

### ***Section Three: Conflict of Interests***

A) Every court employee shall avoid conflicts of interest, as defined below, in the performance of professional duties. Even though no misuse of office is involved, such a conflict of interest involving a court employee can seriously undermine the community's confidence and trust in the court system. Therefore, every court employee is required to exercise diligence in becoming aware of conflicts of interest, disclosing conflicts to the designated authority and ending them when they arise.

1) A conflict of interest exists when the court employee's objective ability or independence of judgment in the performance of his or her job is impaired or may reasonably appear to be impaired or when the court employee, or the employee's immediate family, as defined below, or business would derive financial gain as a result of the employee's position within the court system.

2) No conflict of interest exists if any benefit or detriment accrues to the employee as a member of a profession, business or group to the same extent as any other member of the profession, business or group who does not hold a position within the court system.

3) For the purposes of this Code, "immediate family" shall include the following, whether related by marriage, blood or adoption: spouse; dependent children; brother; sister; parent; grandparent; grandchildren; father-in-law, mother-in-law; sister-in-law, brother-in-law; son-in-law, daughter-in-law; stepfather, stepmother; stepson, stepdaughter; stepbrother, stepsister; half-brother, half-sister.

***B) Prohibited Activities:***

1) No court employee shall enter into any contract with the court system for services, supplies, equipment, leases or realty, apart from the employment contract relating to the employee's position, nor use that position to assist any member of his or her immediate family in securing a contract with the court system in a manner not available to any other interested party.

2) No court employee shall receive tips or other compensation for representing, assisting or consulting with parties engaged in transactions or involved in proceedings with the court system.

3) No court employee shall participate in any business decision involving a party with whom either the court employee or any member of the employee's immediate family is negotiating for future employment.

4) No former court employee shall engage in transactions or represent others in transactions or proceedings with the court system for one year after termination of employment in any matter in which the former employee was substantially involved or in any dealings with offices or positions that the former employee once held.

5) No court employee shall knowingly employ, advocate or recommend for employment any member of his or her immediate family.

6) No court employee shall solicit, accept or agree to accept any gifts, loans, gratuities, discounts, favors, hospitality or services under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court employee in the performance of official duties.

a) Nothing in this section shall prohibit an employee from accepting a public award presented in recognition of public service.

b) Nothing in this section shall prohibit an employee from receiving a commercially reasonable loan made as part of the ordinary transaction of the lender's business.

c) Nothing in this section shall prohibit any person from donating a gift to a group of employees, e.g. all the employees of an office or unit of the court system, provided that the value and circumstances of the gift are such that it could not be reasonably inferred that the gift would influence the employees in the performance of their official duties or that such influence was the purpose of the donor, and provided that any employee accepting such a gift promptly report the gift to the supervisor, who shall be responsible for its proper distribution. Gifts received with

the understanding that they will influence employees' official actions, decisions or judgments are prohibited as abuse of office in Section One, Subsection B.

d) Nothing in this section shall prohibit any person or group from donating a gift of historical or other significant value that is given for the benefit of the court system, provided that such a gift is received on behalf of the court system by the appropriate designated authority.

C) To secure conformity to the above standards, every court employee who has authority to enter into or to approve contracts in the name of the court system shall file a financial disclosure statement with the appropriate designated authority upon beginning employment in such position, at termination of employment, and annually while so employed. Such disclosure shall include all sources of and contractual arrangements for personal income, including investments and real property, business entity income and business position income held or received by themselves, their spouses or their dependent children, and shall follow the guidelines established by the appropriate designated authority.

D) Each full-time court employee's position with the court system must be the employee's primary employment. Outside employment is permissible only if it complies with all the following criteria:

1) The outside employment is not with an entity that regularly appears in court or conducts business with the court system, and it does not require the court employee to have frequent contact with attorneys who regularly appear in the court system; and

2) The outside employment is capable of being fulfilled outside of normal working hours and is not incompatible with the performance of the court employee's duties and responsibilities; and

3) The outside employment does not require the practice of law; and

4) The outside employment does not require or induce the court employee to disclose confidential information acquired in the course of and by reason of official duties; and

5) The outside employment shall not be within the judicial, executive or legislative branch of government without written consent of both employers; and

6) Where a conflict of interest exists or may reasonably appear to exist or where the outside employment reflects adversely on the integrity of the court, the employee shall inform the appropriate designated authority prior to accepting the other employment.

#### ***Section Four: Political Activity***

A) Each employee retains the right to vote as the employee chooses and is free to participate actively in political campaigns during non-working hours. Such activity includes, but is not limited to, membership and holding office in a

political party, campaigning for a candidate in a partisan election by making speeches and making contributions of time or money to individual candidates, political parties or other groups engaged in political activity. An employee who chooses to participate in political activity during off-duty hours shall not use his or her position or title within the court system in connection with such political activities.

B) With the exception of officers of the court who obtain their position by means of election, no employee shall be a candidate for or hold partisan elective office. With the same exception, an employee who declares an intention to run for partisan elective office shall take an unpaid leave of absence upon the filing of nomination papers. If elected, he or she shall resign. An employee may be a candidate for non-partisan office without separating from employment, provided that the employee complies with the requirements in this Code concerning performance of duties, conflicts of interest, etc.

C) No employee shall engage in any political activity during scheduled work hours, or when using government vehicles or equipment, or on court property. Political activity includes, but is not limited to:

- 1) Displaying campaign literature, badges, stickers, signs or other items of political advertising on behalf of any party, committee, agency or candidate for political office;
- 2) Using official authority or position, directly or indirectly, to influence or attempt to influence any other employee in the court system to become a member of any political organization or to take part in any political activity;
- 3) Soliciting signatures for political candidacy;
- 4) Soliciting or receiving funds for political purposes.

D) No employee shall discriminate in favor of or against any employee or applicant for employment on account of political contributions or permitted political activities.

### ***Section Five: Performance of Duties***

A) Every court employee shall endeavor at all times to perform official duties properly and with diligence. Every court employee shall apply full-time energy to the business and responsibilities of the employee's office during working hours.

B) Every court employee shall carry out responsibilities as a servant of the public in as courteous a manner as possible.

C) Every court employee shall maintain or obtain current licenses or certificates as a condition of employment as required by law or court rule.



D) No court employee shall alter, falsify, destroy, mutilate, backdate or fail to make required entries on any records within the employee's control. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order.

E) No court employee shall discriminate on the basis of nor manifest, by words or conduct, bias or prejudice based on race, religion, national origin, gender, sexual orientation or political affiliation in the conduct of service to the court.

F) No court employee shall give legal advice or recommend the names of private attorneys.

G) No court employee shall refuse to enforce or otherwise carry out any properly issued rule or order of court, nor shall court employees exceed that authority. No court employee shall be required to perform any duties outside the scope of the assigned job description.

H) Every court employee shall immediately report violations of this Code to the appropriate designated authority.

I) Court employees who are law students, attorneys or members of other professional groups are also bound by the appropriate professional duties of those roles.

### ***Section Six: Court Managers***

A) Court managers regularly shall update their education.

B) Court managers shall require employees subject to their direction and control to observe the ethical standards set out in this Code.

C) Court managers shall diligently discharge their administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of other court employees.

D) Court managers shall take action regarding any unethical conduct of which they may become aware, initiating appropriate disciplinary measures against an employee for any such conduct and reporting to appropriate authorities evidence of any unethical conduct by judges or lawyers.

E) Court managers shall not act as leaders in or hold office in any political organization, make speeches for any political organization or publicly endorse a candidate for political office.

#### 4. Comments submitted to the SCM on the draft Code of Ethics

##### A. ABA/CEELI'S COMMENTS ON THE DRAFT CODE OF ETHICS FOR COURT CLERKS AND ADMINISTRATIVE STAFF

(Code version as of March 5, 2005)

March 17, 2005

As an initiator of this project, the American Bar Association (ABA/CEELI) wishes to assist the Superior Council of Magistrates (SCM) in its efforts of adopting the Code of Ethics for Court Clerks and Administrative Staff, taking into account the high importance of such a code in the process of judicial reforms and of improving the image of the judiciary in general.

We need to mention that the first draft code was prepared between September 2003 and February 2004 by a working group established, at the suggestion of ABA/CEELI, by a decree of the Minister of Justice. The group consisted of representatives of several departments of the Ministry of Justice, trainers of the National School of Court Clerks (NSCC), magistrates of Bucharest courts and of the Prosecutors' Office by the High Court of Cassation and Justice, court clerks of Bucharest courts, one representative of court clerks' unions, one representative of the Bucharest Bar, one representative of the National Agency of Public Servants, and ABA/CEELI representatives.

During the drafting process, the group took into account both domestic norms in the area of professional ethics (the Code of Ethics for Magistrates, the Code of Ethics for Public Servants in Romania) and similar international regulations (Recommendation 2000(10) of the Council of Europe's Minister Committee, the Code of Ethics of EU Lawyers, the US Model Code of Conduct for Judicial Employees, the Code of Ethics drafted by the National Association for Court Management - US model), as well as comments offered by American experts (Mr. Markus B. Zimmer, US federal court manager and Mr. Don Cullen, founding president of the National Association of Court Managers).

Between February and May 2004, the draft code was disseminated to courts, nationwide, as well as to the Organization, Human Resources and Judicial Statistics Department of the Ministry of Justice, the National Institute for Magistrates. It was also posted on the NSCC website for comments and proposals.

At the same time, the observations presented below, obtained during the seminars organized by ABA/CEELI in partnership with the National School of Court Clerks (a series of 10 seminars on practical and theoretical aspects regarding professional ethics of court clerks) are based equally on suggestions and proposals from court clerks who work in courts under the jurisdictions of Craiova, Oradea, Timisoara, Brasov, Târgu Mures, Alba Iulia, Cluj, and Bucharest Courts of Appeal as well as on those of the 2004-2005 NSCC class of students.

We present below our general observations and specifics regarding the content of the draft code:

### **GENERAL OBSERVATIONS:**

- In accord with the participants' opinion, expressed during the seminars on the topic of professional ethics of court clerks, we suggest the inclusion of a provision to regulate political activities carried out by court administrative staff;
- We also suggest an approach similar to the US Model Code, e.g. introduction in the draft code of a provision to regulate how court administrative staff should react and what procedures they should follow when they are offered gifts while fulfilling their professional duties;
- Another provision regarding respect for private life should be introduced in the draft code;
- We also agree with practitioners that an expansion of regulations is necessary, to cover the conduct of court clerks during court hearings;
- We mention that, in the current draft code, there are no provisions regarding the duty of court clerks to respect their professional oath.

### **SPECIFICS:**

- We recommend that the language of Article 1 remain as it was written in the first draft: "The ethical conduct of court personnel is critical to the quality of justice in Romania, its transparency, accountability, integrity and independence and to acquiring and strengthening public confidence in the justice system.";
- Article 3, which lists the categories of court staff to which provisions of the code apply, is not correlated with Article 3 of Law no. 567/2004. For this reason, we suggest an addition to this article, as follows: "This Code shall apply to the

following categories of judicial personnel: court clerks, statistics clerks, research clerks, archives clerks, IT specialists and registrars";

- In Article 6, we suggest that the verb "to prove" be replaced by the verb "to show," and the term "in a speedy manner" be eliminated. In the same article, the wording "...which might cause damages to litigants" is open to differing interpretations;
- In Article 8, paragraph 1, we suggest that the wording "by placing public interest above all" be eliminated;
- The language of Article 8, paragraph 2 should be rephrased as follows: "Judicial personnel have the duty to collaborate efficiently in delivering justice.";
- Chapter IV, "Confidentiality" (Articles 9-11) should expressly specify, just like the US Model, the categories of confidential information; at the same time, the duration of such an obligation applied to court clerks should be specified.
- Article 12, paragraph 2 contains a deficient wording: "...any prejudices related to a person's race, sex, religion (...)";
- Article 13, which calls for the obligation of judicial personnel to self recuse any time it finds itself in situations of incompatibility specified by law, could be eliminated, because its content can be found in Article 84, point j of Law no. 567/2004 on the Status of Court Administrative Staff;
- We suggest introduction of the wording "In fulfilling their professional duties" in the beginning of Article 14, instead of its end;
- In our opinion, provisions of Article 21, paragraph 2 are not appropriate to a Code of Ethics and we suggest that they be eliminated;
- We suggest adding in paragraph 2 of Article 21 the following language, correlative to the obligation specified by Article 21, paragraph 1: "Judicial personnel has the right to respect and appreciation from magistrates, litigants as well as any other persons they are in contact with during the fulfillment of their professional duties.";
- We also think that Article 22, paragraph 2 should be rephrased, to grant court clerks the right and not the obligation to report to court or prosecutors' office leadership on any conduct that might affect the prestige of the judiciary. At the same time, as a result of discussions in the seminars on professional ethics, the participants suggested that the meaning of the wording „court leadership" be explicitly defined;
- Despite a careful analysis of Article 22, paragraph 5, we think that it remains vague and unclear; its provisions, as they are currently written, result in an impossibility to interpret and apply them (this is an identical comment to that regarding provisions of Article 21, paragraph 2 of the Code of Ethics for Magistrates);
- We also wonder what the meaning of the wording "correct relations" is - in the context of Article 22, paragraph 6 - and insist once again on the fact that all the terms used in the Code should have a clear meaning that is not open to interpretations (we made the same comment on provisions of Article 22, paragraph 1 of the draft Code of Ethics for Magistrates).

B. ABA/CEELI COMMENTS ON THE DRAFT CODE OF ETHICS  
FOR ADMINISTRATIVE STAFF OF COURTS  
AND PROSECUTORS' OFFICES

(Code version as of April 4, 2005)

April 4, 2005

As we mentioned in our comments on the Code of Ethics for Magistrates, ABA/CEELI would like to thank the authors of the Code of Ethics for Non-judicial Staff of Courts and Prosecutors' Offices for having considered CEELI's suggestions and recommendations, which were sent to the Superior Council of Magistrates in March 2005.

ABA/CEELI's comments on the latest version of the Code of Ethics for Non-judicial Staff of Courts and Prosecutors' Offices, on April 4, 2005, are the following:

1. In Article 6, we suggest the correction of a language error from "competences" to "competence";
2. we believe that, in Article 11 paragraph 2, the phrasing "non-judicial employees shall not show, in any way, influences related to race, sex, religion, etc." is linguistically incorrect. As a result, we recommend a rephrasing of this paragraph as follows: "In their professional activity, non-judicial employees shall have an equidistant attitude, without any prejudices related to race, sex, religion, etc.";
3. Also, in our opinion, as we mentioned in our previous comments, Article 12 should be eliminated, because it rather belongs to an internal regulation;
4. We insist on the elimination from Article 19 of the phrasing "of nature to affect the fulfillment of their professional duties or the prestige of the judiciary" and on a rephrasing of the entire article. We specify that such a regulation is an addition to the Law, being different from that specified by Article 77, paragraphs 1 and 2 of Law no. 567/2004 on the Status of Non-Judicial Employees, and generates interpretations and confusions in its application. For this reason, we suggest a rephrasing of Article 19 as follows: "Non-judicial court employees shall refrain from any extraprofessional activities, under the law;"
5. We believe that paragraph 4 of Article 22 is unclear and confuse and needs a clearer rephrasing; we do not deny that, substantively, these provisions might be useful, but the ambiguity of their language sends us away from the meaning of this provision;
6. We also suggest the elimination of paragraph 3 of Article 21, because such regulation belongs to an internal regulation instead to a code of ethics;
7. Due to its language ambiguity, we suggest the elimination of paragraph 5 of Article 22. We mention that a similar provision existed before also in the Code of Ethics for Magistrates (Article 21 paragraph.2 of the version on March 8, 2005), but, after a meeting organized at the Superior Council of Magistrates, it was removed.

## 5. The Code of Ethics for Court Clerks

Motto: The purpose of a code of ethics is to provide a model for conduct, and to illustrate what professional honor and dignity represent. To respect your profession means to respect yourself by respecting others. This is why any code of ethics appeals, first, to people and their conscience and needs to be upheld through free will.

## THE CODE OF ETHICS FOR ADMINISTRATIVE STAFF OF COURTS AND PROSECUTORS' OFFICES

### **I. General provisions**

Art. 1. Ethical conduct of administrative staff of courts and prosecutors' offices is critical to the quality of justice in Romania, and to the transparency, impartiality and independence of the judiciary.

Art. 2. The purpose of this Code is to establish rules of moral integrity for administrative staff and the conduct it should adopt, as well as to inform the public on the conduct which it is entitled to expect from courts and prosecutors' offices personnel.

Art. 3. This Code shall apply to court clerks, statistics clerks, research clerks, archives clerks, IT experts, and registrars of courts and prosecutors offices.

### **II. Prestige of the judiciary**

Art. 4. Through its conduct as a whole, administrative staff of courts and prosecutors' offices needs to contribute to the respect of the rule of law, and to ensure transparency of and public confidence in the judicial authority.

Art. 5. Administrative staff shall have the duty to help protect the prestige of justice.

### **III. Professionalism**

Art. 6. In fulfilling its professional duties, administrative staff shall act with competence, impartiality and in a timely manner, and shall refrain from any act that may negatively affect litigants or the prestige of the judiciary.

Art. 7. (1) Administrative staff shall have to demonstrate professional competence and to seek continuous professional development.

(2) Administrative staff shall fulfill its duties with commitment and responsibility.

Art. 8. Administrative staff shall serve the judiciary with loyalty and fulfill its duties in good-faith.

### **IV. Confidentiality**

Art. 9. Administrative staff is prohibited from disclosing or using information acquired while it carries out its professional activity for purposes other than those related to the fulfillment of its professional duties.

Art. 10. Administrative staff shall refrain from any attempt to obtain data or information which is not entitled to have access to.

### **V. Impartiality**

Art. 11. (1) In fulfilling its professional duties, administrative staff shall be objective and observe the procedural rights and guarantees of all parties, without discrimination.

(2) In its professional activity, administrative staff shall be impartial regardless of the person's race, sex, religion, nationality or his/her socio-economic, political and cultural status.

Art. 12. Administrative staff has the duty to recuse itself whenever it finds itself in any of the situations of incompatibility established by law.

### **VI. Abuse of position and conflict of interests**

Art. 13. In fulfilling its professional duties, administrative staff shall refrain from any behavior that might make it vulnerable to influences.

Art. 14. Administrative staff is prohibited from using its official position to obtain privileges or advantages, for itself or for others.

Art. 15. In fulfilling its professional duties, administrative staff may not ask for or accept gifts or favors.

Art. 16. Administrative staff shall not contract, directly or through intermediaries, or as an emissary, with courts or prosecutors' offices toward providing services, materials or equipment.

## **VII. Conduct within and outside the court**

Art. 17. Administrative staff shall show moderation and shall not display discontent towards any of the individuals with whom it comes in contact in its official position.

Art. 18. Administrative staff shall behave politely, calmly, kindly and without arrogance in its relations with litigants, judges, prosecutors, lawyers, peers, as well as with any other persons.

Art. 19. (1) Administrative staff is prohibited from expressing its opinion on the legality and validity of documents issued by the court or the prosecutors' offices where it works.

(2) Administrative staff shall report to the court or the prosecutors' office leadership any conduct that may affect the prestige of the judiciary.

(3) Administrative staff is not allowed to make comments upon or to explain to the media any decisions delivered in cases it is familiar with through fulfilling its professional duties, or on pending cases, as well as on cases handled in prosecutors' offices.

4) While fulfilling its professional duties, administrative staff is not allowed to make use of the documents it prepares in order to express its political beliefs.

(5) Relations of administrative staff with judges, prosecutors and peers need to be based on respect and good-faith. It may not express its opinion regarding the professional and moral probity of judges, prosecutors and other peers.

Art. 20. Administrative staff shall be neat and wear decent clothing, and shall avoid extravagances. During court sessions, it shall wear the appropriate clothing (robe), as required by law.

Art. 21. Administrative staff shall protect and use according to its purpose assets it is entrusted with for the fulfillment of its professional duties.



Art. 22. Administrative staff shall not provide to any interested parties recommendations for lawyers, experts, public notaries, bailiffs or any other persons who carry out activities related to justice.

Art. 23. Administrative staff is prohibited from providing legal advice.

### **VIII. Final provision**

Art. 24. Violation of provisions of this Code shall entail disciplinary liability of court clerks and other administrative staff of courts and prosecutors' offices.

## 6. Evaluation Results of the Ten Seminars

1) How do you consider this seminar from the point of view of its organization?

VERY USEFUL - 100%

Comments:

- the seminar was very well organized, both from the point of view of the disseminated materials, the location and the offered conditions
- the time allotted to this seminar was used in an efficient way, so that all the case studies could be discussed, and conclusions were drawn
- the seminar was very well structured, because concrete issues have been discussed, which are useful to us as future court clerks
- we are at the beginning of our profession and we have never faced such situations; the seminar is well organized and places us in various situations - how we should behave, what we should do and what we shouldn't; we would not have known some aspects if this seminar had not been organized
- such a seminar and topic make us assess our own attitude, place ourselves in situations we have never faced or, on the contrary, we have faced in our work, and analyze the manner in which we acted, by comparison; the organization of the seminar was impeccable

2) How do you consider the seminar from the point of view of the teaching method?

VERY USEFUL - 100%

Comments:

- from the point of view of the teaching method, I think the seminar reached its goal: that all the ideas the participants expressed during the discussion of the 5 case studies matter
- the moderators try hard to understand and clarify each situation that raised discussions, as detailed as possible and based on real situations
- the teaching manner was very well structured; the moderators tried to help the participants as much as possible and to encourage them to express their points of view
- the interactive manner of discussions was the best choice, because it gave each of us the possibility to express our opinions

3) Do you think this seminar has been useful for your professional activity?

VERY USEFUL - 100%

Comments:

- after this seminar, I have become more aware of the importance of court clerks' activity from an ethical and behavioral point of view; I will use the knowledge acquired during this seminar in my everyday work
- this seminar will definitely help me in my work because similar situations discussed here, and many others, will occur; I will definitely follow many of the suggestions and guidelines offered by the organizers of the seminar because, this way, I will be able to handle any situation
- yes, because some aspects were not clear to me before I attended this seminar and, on this occasion, most of them became clear to me
- it was useful as it offered us the opportunity to thoroughly study our ethical norms; I think that an efficient court clerk must, first of all, know how to behave because his/her attitude dictates the attitude of his/her superiors and of litigants towards him/her

4) How useful do you think the training materials have been?

VERY USEFUL - 97%

Comments:

- they were useful for a study in depth of the legislation in the area of ethics
- I was really impressed by the rigor with which the materials have been prepared and by their presentation

5) How useful do you think the group discussions have been?

VERY USEFUL - 100%

Comments:

- the fact that we consulted on controversial issues lead to disappearance of any dilemmas and also helped us to know better our way to think, act and also the different practices in the same situations; working in groups is beneficial for the obtained results
- very useful; the seminar addressed issues that occur in practice, situations we will definitely face in our work; the fact that discussions were conducted among groups offered the seminar interactivity and dynamics
- group discussions were useful due to the fact that they were interactive and, at the same time, resulted in a better understanding of some notions and situations

- the working group method results in a temporary homogenization of opinions, and in making slight compromises. This is a good thing, because we learn to listen to others and to reflect on various opinions, after which we either adopt or reject them

6) Did the seminar moderator (trainer) succeed to keep the participants' motivation at a high level?

YES - 100 %

7) Were all the tasks clearly explained?

YES - 100 %

8) Has it been very difficult to read all the materials during the training course?

YES - 100 %

9) Was communication with the moderators good during the seminar?

YES - 100 %

10) Would you prefer a more interactive seminar?

YES - 30 %

NO - 70 %

Comments:

- I think a more interactive seminar would „scare" us a little, because we are not used to such a training form;
- the seminar had an active role in discussing theoretical and practical aspects of the Code of Ethics; each and every court clerk should know these aspects, to comply with them with correctness and professionalism;
- maybe the seminar should address more concrete fact situations, which do not occur very often in practice; in such a case, if we were placed before situations we had never foreseen in any way, comments may be much livelier;
- I would prefer such seminar to be conducted for court clerks and judges-to-be, in order to establish more clearly the relationship between judges and court clerks.

11) I consider the seminar was extremely interesting and useful:

YES - 100 %

12) The topic of the seminar is very useful to court clerks:

YES - 100 %

13) I will use the information acquired during the seminar in performing my professional duties:

YES - 100 %